

MC62PLA1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 In re:

4 PLATINUM-BEECHWOOD LITIGATION 18 Civ. 06658 (JSR)

5 -----x

6 MARTIN TROTT and CHRISTOPHER 18 Civ. 10936 (JSR)
7 SMITH, as Joint Official
8 Liquidators and Foreign
9 Representatives of PLATINUM
10 PARTNERS VALUE ARBITRAGE FUND LP
(in Official Liquidation) and
11 PLATINUM PARTNERS VALUE ARBITRAGE
12 FUND LP (in Official Liquidation)

13 Plaintiffs,

14 v.

15 PLATINUM MANAGEMENT (NY) LLC,
16 et al.,

17 Defendants.

18 -----x Trial

19 New York, N.Y.

20 December 6, 2022
21 9:20 a.m.

22 Before:

23 HON. JED S. RAKOFF,

24 District Judge
25 and a Jury

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APPEARANCES

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ALLESANDRA TYLER

Also Present:

Michael Robson, Paradocs Motion Support
Esterah Brown, Paralegal, Curtis Mallet

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1 (Trial resumed; jury not present)

2 THE COURT: First order of business is to hear from
3 plaintiffs' counsel as to how much longer you might have on
4 your direct.

5 MS. SHEN: I expect another 20 minutes on
6 Ms. Albanese, but we do have an issue with Ms. Albanese. We
7 got an e-mail from her this morning saying that she --

8 THE COURT: I haven't seen any e-mail, so let me hear
9 what's the issue.

10 MS. SHEN: Sorry. She e-mailed us this morning.

11 THE COURT: I'm sorry. She e-mailed you to say what?

12 MS. SHEN: She said that she was unwell and not
13 planning to appear. We offered to send a car for her. She
14 said she was concerned about that the commute took a lot out of
15 her yesterday. We have been following up with her all morning
16 and we have received no responses.

17 THE COURT: All right. Why don't you send her an
18 e-mail saying we are sorry to hear she is not feeling well, and
19 we will excuse her until 9:15 tomorrow morning. If she still
20 feels unwell during the day, we will need to see a doctor's
21 letter.

22 MS. SHEN: Okay. We will send that.

23 THE COURT: Who is your next witness?

24 MS. SHEN: We will start with deposition designations
25 this morning and then our first live witness will be Seth

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1 Gerszberg.

2 THE COURT: I'm having a little trouble hearing you.
3 You can be seated if you would like, but just speak into the
4 microphone.

5 So how long do you think you will be on direct with
6 that witness?

7 MS. SHEN: With the designations, I think it might
8 take about 45 minutes to read them all in.

9 THE COURT: And who do we have after that?

10 MS. SHEN: Seth Gerszberg.

11 THE COURT: Were there some other issues that anyone
12 wanted to raise? I want to get to the release in a minute, but
13 anything else?

14 MS. SHEN: Your Honor, I actually have one question
15 about the designations. There was one objection that has
16 designations that your Honor didn't rule on in the copy that
17 you gave us, and I wanted to just clarify that before we move
18 forward.

19 THE COURT: What was the exhibit?

20 MS. SHEN: It's in the Katz deposition. I have the
21 original. There was just one of defendant's objections your
22 Honor didn't mark --

23 THE COURT: I'm sorry. In the depositions. I'm
24 sorry. I missed one. I see. Hand it up.

25 (Pause)

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1 THE COURT: I'm sorry. I see. You should know from
2 my rulings on the three succeeding objections that this
3 objection is also sustained. So let me hand this back to
4 plaintiffs' counsel.

5 Anything else.

6 MR. GLUCK: Two other items.

7 One is, we took to heart your comment about alacrity
8 and moving trial along. The idea from plaintiffs is that we
9 move the remainder of the unobjected-to plaintiffs' exhibits
10 into evidence, that is, streamline matters, opposed by defense
11 counsel.

12 THE COURT: Let me hear what defense counsel said.

13 MR. LAUER: I didn't hear it exactly, but if this is
14 the application to just mass introduce documents, I have always
15 believed that the Court's rule, which is the one that I have
16 mostly experienced, is if an exhibit is important enough, it
17 gets introduced at trial, otherwise we have trial by ambush.
18 And there are a lot of documents in this case, a lot of
19 documents were in, issues are no longer in, so --

20 THE COURT: Well, I agree with you, although not
21 totally for your rhetorical reasons about ambush.

22 "Unobjected to" means unobjected to on any ground but
23 relevance. You always preserve an objection for relevance
24 until the exhibit is offered, and how do you know, if you are
25 defense counsel, whether an exhibit is relevant or not until

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1 the moment it is introduced?

2 MR. GLUCK: I can provide an example. There are sets,
3 dozens of exhibits that, for example, are simply the SSNC NAV
4 statements of PPVA, one after another after another.

5 THE COURT: Well, I will tell you what. If you --
6 with respect to specific exhibits, if you can work out an
7 agreement with counsel, of course that's fine with the Court,
8 but I'm not going to make a blanket acceptance. What I will
9 say is that when an exhibit is offered, since these are all
10 exhibits that both sides have seen in advance, I am not going
11 to allow any objection other than relevance to any exhibit that
12 was previously not objected to and I am going to expect counsel
13 to determine whether they want to object on grounds of
14 relevance very quickly after the offers.

15 MR. GLUCK: Thank you. We will try to do that.

16 The second item is that there appears to be, on the
17 part of Mr. Nordlicht's counsel, some confusion over whether he
18 is permitted to be called as a trial witness, and he has
19 suggested that he is available by telephone.

20 THE COURT: First we have got to reach the question of
21 whether there is a basis for calling him and then we will worry
22 about the logistics, but I still haven't heard any convincing
23 ground for calling Mr. Nordlicht.

24 Who wants to call Mr. Nordlicht? Plaintiffs' counsel
25 I think the only thing you mentioned was to have him repeat

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1 taking the Fifth on the release; and, for reasons I have
2 already indicated, I didn't think that was admissible.

3 So is anyone else planning to call Mr. Nordlicht for
4 any reason?

5 MR. GLUCK: I'm not sure if anyone else is planning to
6 call Mr. Nordlicht. There was a two-page e-mail sent to your
7 law clerk, Mr. Bardia, on --

8 THE COURT: Who is in—an experience I know you will
9 be very surprised to hear this—a subway delay. That might
10 happen in a Paris subway and the Moscow subway. I can't
11 believe it would happen in the New York subway.

12 MR. GLUCK: I can call it up now and give the Court a
13 gist. That e-mail set forth in detail the reasons and bases
14 and topic matters for the plaintiffs' intent to call
15 Mr. Nordlicht on the issue of release other than -- other than
16 on particular --

17 THE COURT: I see. So rather than discuss it now, let
18 me take a look at that. Just if you would send it to my
19 courtroom deputy, who will give you her e-mail, so she is one
20 step ahead and I will take a look at that and we will discuss
21 it at the next break.

22 By the way, the schedule today is I have a zoom
23 conference in my chambers at 12:30 on another matter, so we
24 will go from 9:30 to 12:25 with our usual mid-morning break,
25 but we will take lunch early from 12:25 to 1:25, and then we

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1 will continue, and then I have another matter at 4:00.

2 All right. Anything else?

3 MS. SHEN: Sorry, your Honor. I have one, just one
4 matter of housekeeping, as well. This is really for the
5 record. There was a little confusion yesterday with some of
6 the exhibits that were -- we were trying to get.

7 (Court reporter confers)

8 There were some issues with the exhibit markings that
9 we had identify on Mr. Fuchs' redirect, and I just want to
10 clarify for the record the correct exhibit numbers.

11 THE COURT: Okay.

12 MS. SHEN: So the Fuchs first amended answer and
13 crossclaims was marked as PX 928 for identification, but it
14 actually was remarked as PX 927 and it came into evidence as
15 PX 927. And then PX 928 was remarked as a summary chart that
16 was marked for identification, but it did not come into
17 evidence.

18 THE COURT: All right. So in terms of the exhibit
19 that was received, what is the number that, when it is sent to
20 the jury it will bear.

21 MS. SHEN: It will be PX 927.

22 THE COURT: All right. Very good.

23 (Plaintiff's Exhibit 927 received in evidence)

24 THE COURT: Let's get the witness on the stand, the
25 next witness. I will explain to the jury the other witness is

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1 postponed. And let's bring in the jury.

2 (Pause)

3 THE DEPUTY CLERK: The final juror has entered the
4 courthouse and is making their way up. A couple of the jurors
5 have asked me if I know when testimony will end.

6 THE COURT: Sure. At the end. But what you can tell
7 them -- I will tell them when they come in that as far as I can
8 tell we are still on schedule, but I can't predict for sure
9 exactly when testimony will end, but I will determine, as I
10 told them when we selected them, that this case will go to them
11 sometime early next week. And if anyone has any problem with
12 that, you better raise it now.

13 MR. LAUER: Your Honor, most respectfully, I think the
14 discussions that we have had, at least with the other side, was
15 sort of even steven, and we have been anticipating ending our
16 evidence sometime on next Wednesday, given the progress to
17 date, the number of days that they will have taken for their
18 case and our need to address things.

19 THE COURT: When does plaintiffs' counsel expect to
20 conclude.

21 MR. GLUCK: We think that, with this Albanese issue
22 and potentially the Nordlicht issue, we are three-quarters of
23 the day before. We hope to be finished Wednesday evening or
24 Thursday morning instead of Wednesday afternoon.

25 THE COURT: So let's assume Wednesday -- end of court

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1 Wednesday for completion of plaintiffs' case, and I think I may
2 have to start putting in time limits on both direct and cross,
3 which I am very reluctant to do, but we do need to move this
4 along.

5 So defense starts Thursday morning. Who is it you are
6 calling?

7 MR. HERTZBERG: Your Honor, we would call Joseph
8 SanFilippo, CFO of PPVA is our first witness.

9 THE COURT: Who else? Who else are you planning for
10 sure to call?

11 MR. HERTZBERG: David Steinberg, the chief risk
12 officer and portfolio manager we have heard from. Obviously
13 Mr. Bodner. We are planning on calling witnesses from
14 Alvarez & Marcal evaluator. Sterling, the gentleman your Honor
15 called back from Hong Kong. Cohn Reznick, the auditor. BDO
16 auditor.

17 THE COURT: That sounds cumulative and excessive to
18 me, but I will think about it.

19 Let's get the next witness on the stand now.

20 MR. GLUCK: We are reading.

21 THE DEPUTY CLERK: Jury entering the courtroom.

22 (Continued on next page)
23
24
25

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1 (Jury present)

2 THE COURT: Good morning, ladies and gentlemen. It is
3 really going to be a nasty day outside, so it's the perfect day
4 for sitting as a jury, right?

5 I heard you were inquiring as to when the evidence in
6 this case will conclude. It's going to be, as I think I
7 indicated when you were sworn in, we are allotting two weeks.
8 That will go into early next week. The one thing I can't
9 predict is how long your deliberations will take. So that will
10 be up to you, not to me. But in terms of the evidence, I'm
11 optimistic that we will complete all the evidence by next
12 Tuesday.

13 So we are now going to hear excerpts from certain
14 depositions. I told you yesterday what a deposition is. It's
15 sworn testimony that is taken by the parties in advance of
16 trial. Sometimes a witness is not available either because
17 they live too far away or for whatever reason, and then in that
18 case excerpts from their testimony can be read into evidence.
19 These are some of these excerpts were proposed by the
20 plaintiff, some by the defendant, but that doesn't matter.
21 What's important for you to understand is it is just the same
22 as if the person was here testifying except you won't see the
23 live person, but you will be able to hear what that person had
24 to say. One counsel will read the questions as if he were the
25 person propounding the questions and one counsel will read the

Mc62Pla1

"Muller -

1 answers.

2 But let's first identify who the witness is whose
3 deposition you are offering.@@

4 MR. GLUCK: Margaret Muller, M-U-L-L-E-R.

5 THE COURT: All right, counsel. Go ahead.

6 BY MR. MAGRUDER:

7 "Q All right. Would you please state your full name and
8 spell your first and last name for the court reporter.

9 A. Maggie Muller, M-A-G-G-I-E M-U-L-L-E-R.

10 "Q Okay. Where do you work now?

11 "A I work from home.

12 "Q Okay. Before that, where did you work?

13 "A I worked at -- I worked at Platinum on 55th Street.

14 "Q And did Mr. Mark Nordlicht have an office there?

15 "A Yes.

16 "Q Okay. Did Mr. Huberfeld have an office there?

17 "A No.

18 "Q Okay. Did Mr. Landesman have an office there?

19 "A Yes.

20 "Q Did Mr. Bodner have an office there?

21 "A No.

22 "Q Mr. Bodner did not have an office at Platinum?

23 "A No.

24 "Q Okay. Now, at some point you moved, and is it fair to say
25 that those offices were consolidated into one?

Mc62Pla1

"Muller -

1 "A Yes.

2 "Q All right. Do you remember when the move was?

3 "A 2014.

4 "Q Okay.

5 "A I believe.

6 "Q And at that time, do you remember what -- what is the
7 address for the new -- the new space? Do you remember?

8 "A I don't remember.

9 "Q But you went to work there every day, correct?

10 "A It was on 55th and Eighth. Maybe it was 250 West 55th. I
11 don't remember.

12 "Q Okay. All right. And how -- so if they moved there in
13 2014, you would have worked there a little over two years, is
14 that correct, before you were let go?

15 "A Yes.

16 "Q Now, so who had offices in that building, the new space
17 for Platinum?

18 "A The 4th floor and the 54th floor moved to the 55th Street
19 address.

20 "Q Right. Okay.

21 "And was Mr. Bodner -- did he have an office in this
22 new space?

23 "A Yes.

24 "Q Okay. And Mr. Landesman?

25 "A Yes.

Mc62Pla1

"Muller -

1 "Q Mr. Huberfeld?

2 "A Maybe he shared an office with David. No, I don't
3 remember. No.

4 "Q So you don't remember?

5 "A No.

6 "Q Okay. How about Mr. Fuchs?

7 "A Yes.

8 "Q Okay. So he had an office in the new space.

9 "A Yes.

10 "Q Okay. How about Mr. Saks? Did he have an office in the
11 new space?

12 "A I think I am confusing Mr. Saks with someone else, to be
13 honest.

14 "Q Okay.

15 "A So I don't remember.

16 "Q Okay. You were pretty clear that Mr. Mark Nordlicht had
17 an office in the new space, correct?

18 "A Yes.

19 "Q And Mr. Landesman had an office in the new space.

20 "A Yes.

21 "Q And Mr. Bodner had an office in the new space.

22 "A Yes.

23 "Q Okay. Let's talk about the offices. Who else, other than
24 Mr. Nordlicht, Mr. Landesman, Mr. Bodner, Mr. Fuchs, had
25 offices, if you can remember?

Mc62Pla1

"Muller -

1 "A So the offices are reserved for upper management. So our
2 CFO had an office.

3 "Q Who was that?

4 "A Mandelbaum.

5 "Q Okay. Anybody else?

6 "A The COO had an office.

7 "Q Who was that?

8 A. Will Slota.

9 "Q Okay. And anyone else?

10 "A I don't remember. I don't know.

11 "Q Okay. Now, when you first started, you stated that you
12 were assistant to Mr. Landesman. Is that correct?

13 "A Yes.

14 "Q Were you assistant to anyone else when you first started?

15 "A No.

16 "Q Did there come a time when you became an assistant to
17 someone else?

18 "A In 2016, 2015, the end of 2015, I became assistant to
19 Mr. Bodner.

20 "Q Okay. Why did that happen?

21 "A Because his old assistant left.

22 "Q Okay. And had you done any work for him before?

23 "A No.

24 "Q Okay. And so when Angela Albanese left, did Mr. Bodner
25 come to you and ask if you would be his assistant, too?

Mc62Pla1

"Muller -

1 "A No.

2 "Q How did you get that position?

3 A. So Angela left, and I think he was using Mimi; and then
4 Mimi went on vacation, and so then Nicole was filling in; and
5 then Nicole's dad died.

6 "Q What's Nicole's last name?

7 "A I don't remember.

8 "Q Okay. What is Mimi's last name?

9 "A Morales.

10 "Q Okay.

11 "A So her dad died, so she was out. So then I took over not
12 to take over, but was just filling in for a while. I thought
13 she was going to be out. And I guess I was a better assistant
14 or something, so he decided to stay with me.

15 "Q And you just kept -- and so at that point you were both
16 the assistant for Mr. Landesman and Mr. Bodner?

17 "A Yes.

18 "Q Is one of your duties was to set up meetings between I
19 will call them the principals—Mr. Nordlicht, Mr. Bodner,
20 Mr. Landesman, Mr. Huberfeld—was that one of your duties was
21 to help set up and schedule meetings?

22 "A Yes.

23 "Q And did these meetings typically happen at the Platinum
24 offices?

25 "A Yes.

Mc62Pla1

"Muller -

1 "Q Okay. And would you ever attend any of these meetings?

2 "A No.

3 "Q Okay. So they had -- they never had you come in and take
4 notes or anything like that during a meeting.

5 "A No.

6 "Q Did anyone -- any other assistant play that role, go to
7 the meetings and take notes or anything like that?

8 "A No.

9 "Q So when the principals had a meeting, it was just them.

10 "A Yes.

11 "Q Did they ever hold their meetings, again, these
12 principals, at restaurants?

13 "A I don't know. As an assistant, my job was to also make
14 dinner reservations. I don't know if" . . .

15 (Pause)

16 "A I don't know. As an assistant, my job was to make -- also
17 make dinner reservations. I don't know if it was for a meeting
18 or if they were just having dinner.

19 "Q I see. Okay. And for these -- for these dinner meetings,
20 did you ever attend any of those?

21 "A No.

22 "Q After these meetings, do you recall any incident in which
23 either Mr. Landesman or Mr. Bodner would come back to you and
24 ask you to memorialize what happened or take notes or anything
25 like that?

Mc62Pla1

"Muller -

1 "A No.

2 "Q Any memory of any contentious meetings that one of the
3 principals—either Mr. Bodner, Mr. Landesman—told you that
4 there was a meeting and that -- with the other principals, and
5 it went poorly or there was fighting or anything like that?

6 "A No.

7 "Q No memory of anything like that.

8 "A No.

9 "Q So this is control number 4670006 and this is tab 1.
10 Exhibit No. 220, tab 1, instant message, top message dated
11 11/25/13 from Uri Landesman to Uri Landesman, subject
12 conversation, Bates number CTRL467006, description is marked by
13 the reporter for identification.

14 So what is -- what is this, this being tab 1?

15 "A I am looking to see what it is. I will tell you.

16 "Q Okay. Good. Thank you.

17 "A This is an instant message between me and my boss, Mr. Uri
18 Landesman.

19 "Q Okay. So this is dated November 25, 2013. It's around --
20 it's in the afternoon, I guess, and this -- was this an IM
21 service that you had with internal to the office that you could
22 instant message him as opposed to e-mail?

23 "A Yes.

24 "Q Okay. And so you said: Uri, you need a full hour with
25 Duvid or will half an hour do? He responds: He called the

Mc62Pla1

"Muller -

1 meeting. You responded: Okay.

2 "So is this an instance where you are helping set up a
3 meeting between Mr. Landesman and Mr. Bodner?

4 "A I don't know. Since there is no last name after Duvid, I
5 don't know, and there were several men in the office named
6 David.

7 "Q Does anyone else go by D-U-V-I-D other than Mr. Bodner?

8 "A Yes.

9 "Q Who?

10 "A It could have been -- I don't remember their last names.
11 It could have been -- I don't know to be honest. There were a
12 lot of Davids.

13 "Q Okay. Any other Davids ask you to set up meetings with
14 Mr. Landesman, do you recall?

15 "A I don't remember.

16 "Q Well, actually, Uri is saying he called the meeting,
17 correct?

18 "A I can't remember.

19 "Q Well, that's what it says, right?

20 "A That is what it says, but you are asking me which Duvid it
21 was and --

22 "Q I'm asking you.

23 "A To be honest, I don't remember.

24 "Q Mr. Landesman is saying he called the meeting, 'he' being
25 Duvid, whoever Duvid is, correct?

Mc62Pla1

"Muller -

1 "A Yes.

2 "Q Okay. And so and you are helping set up this meeting?

3 "A Uh-huh.

4 "Q Correct. Okay. Well, other than Mr. Bodner, did you work
5 for any other Duvids that you helped set up meetings for?

6 "A I didn't work for Bodner, Mr. Bodner, at this time.

7 "Q Okay. All right. I had asked you a little bit earlier
8 about communications with investors, and if you could take a
9 look at tab 3. Okay. And you say -- and he says --
10 Mr. Landesman says, as I just indicated, no, unless Duvid asks
11 me to. So is that referencing Mr. Bodner who is asking him to
12 make these investor calls?

13 "A I don't know.

14 "Q Okay. Is there any other Duvid who was asking
15 Mr. Landesman to make investor calls?

16 "A I'm not on these e-mails. I don't know.

17 "Q I understand. I am just asking you are there any other
18 Duvids?

19 "A I answered. I said no. I don't know.

20 "Q You don't know. So did Mr. -- are you aware that
21 Mr. Bodner asked him to make --

22 "A I'm not aware.

23 "Q -- investor calls?

24 "A No.

25 "Q Was Mr. Bodner a partner?

Mc62Pla1

"Muller -

1 "A Yes.

2 "Q Now, with regard to setting up these e-mails with
3 investors, this was one instance where the meeting was set up
4 between the investor and Mr. Landesman, Mr. Kimmelman and
5 Mr. Mann, correct?

6 "A On this same phone call?

7 "Q Yes.

8 "A No, that's --

9 "Q That's what you were being asked to do, correct?

10 "A No. I'm asked to set up a phone call with Uri and Amir.

11 "Q Did you ever -- and Amir is an investor?

12 "A Yes.

13 "Q Okay. And we -- and Mr. Landesman is a partner?

14 "A Yes.

15 "Q Did you ever set up similar calls between other investors
16 and Mr. Bodner, do you remember?

17 "A Between investors and Mr. Bodner?

18 "Q Um-hmm.

19 "A Uh-huh."

20 MR. AMENT-STONE: Objection.

21 THE COURT: Excuse me?

22 MR. AMENT-STONE: That wasn't the testimony.

23 MR. GLUCK: "Um-hmm."

24 MR. MAGRUDER: I think I'm supposed to say "um-hmm."

25 MR. AMENT-STONE: He says.

Mc62Pla1

"Muller -

1 MR. GLUCK: Oh.

2 BY MR. MAGRUDER:

3 "Q Um-hmm.

4 "A When?

5 "Q At any time.

6 "A No, not that I recall.

7 "Q Not that you recall?

8 "A Correct.

9 "Q This is an IM instant message between you and
10 Mr. Landesman in November of 2013, control number 4655, excuse
11 me, 4658573, and you write to him: 'I only got PPLO margin for
12 the day. I will bring it in with your lunch when Perl leaves.'

13 "Okay. What is the PPLO margin for the day? Do you
14 remember that?

15 "A It was the margin report.

16 "Q Okay. And who would have given that to you?

17 "A I think at this point, I don't know, I could just log in,
18 pull it, and print it. I don't think I physically took it from
19 anyone. I think it was on the computer.

20 "Q Okay. And is this something -- the document that you
21 would routinely give to Mr. Landesman?

22 "A Yes.

23 "Q And who is Perl, P-E-R-L?

24 "A Whoever he was meeting with. Perl must have been the
25 person who came to his office.

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"Muller -

1 "Q But do you know who that person is?

2 "A I can't remember who they were. Yeah. No. I don't -- I
3 don't remember.

4 "Q Okay. And then he responds 'after Duvid.' Is that
5 Mr. Bodner?

6 "A I don't know.

7 "Q You don't know. Do you suspect that it's Mr. Bodner?

8 "A No, I don't suspect it.

9 "Q Do you know who else he would be meeting with named Duvid?

10 "A Could have been there speaking to any number of guys in
11 the office. There were a few Davids and Duvids.

12 "Q He spells it D-U-V-I-D. Anybody else that spells it that
13 way?

14 "A That's how you spell it in like Jewish people. They put
15 the U in there.

16 "Q Right.

17 "A And say Duvid, so any one of them.

18 "Q So anyone else?

19 "A Yes.

20 "Q Did you see that often?

21 "A Yes, very often.

22 "Q To who?

23 "A For everyone named David would be referred to as Duvid.

24 "Q Well, I thought when Angela left in late July 2015, you
25 started to help Mr. Bodner. Is that not accurate?

Mc62Pla1

"Muller -

1 "A Two other girls before me helped him, then this landed in
2 my lap.

3 "Q Okay. I see. But you -- when she left, you moved to her
4 desk.

5 "A I don't know when that happened.

6 "Q Why?

7 "A I probably moved to her desk right before I started
8 working for David because she was right outside of my boss's
9 office, so it made sense for me to move there. I couldn't stay
10 where I was originally.

11 "Q All right. Let's take a look at 22, control number
12 7736607. It's an e-mail between you and Mr. Nordlicht, January
13 8, 2016. At this time you were Mr. Bodner's assistant, is that
14 correct, January of 2016?

15 "A Yes.

16 "Q You were also Mr. Landesman's assistant, correct?

17 "A Yes.

18 "Q All right. And he writes, 'Bottom line is, let's divide
19 up and schedule when and where we are going after prospects.
20 Next week is judgment week. I really think even if we have to
21 ask favor for investment in PPCO, we should do it and do
22 crossover or try to get a hybrid half and half. PPCO should
23 double over three years, so even if PPVA crashed, you get
24 principal back and own small management share in great credit
25 fund. Maggie, please E print out and send to David,' and is

Mc62Pla1

"Muller -

1 that refer to David Bodner?

2 "A Yes.

3 "Q Is that a mistype what is E print versus just print?

4 "A That's a typo.

5 "Q Okay. So at this point in time, is Mr. Bodner not taking
6 e-mail so you would have to print it out and put it on his
7 desk? Is that what you would do?

8 "A Yes.

9 "Q So he didn't just -- whatever, the communication would go
10 to him, just not from e-mail, is that correct?

11 "A This communication?

12 "Q Correct.

13 "A Yes.

14 "Q And so your -- your duty was to print it and make sure he
15 got it, so he got the communication, just not through e-mail,
16 correct?

17 "A Yes.

18 "Q Okay. And you did this, correct? You say 'okay.'

19 "A Yes."

20 MR. MAGRUDER: That's all for Ms. McGovern Muller.

21 THE COURT: Okay. So a couple of things first. I am
22 sure that from now on when you read the Bible you will keep in
23 mind the battle between Goliath and Duvid.

24 You heard reference in that to the witness who was on
25 the stand late yesterday, Ms. Albanese. I neglected to mention

Mc62Plal

"Katzenstein -

1 to you that she is a little under the weather today. She will
2 probably be here tomorrow. So we had to interrupt her
3 testimony, but she will continue before the end.

4 What's next?

5 MR. MAGRUDER: This is the deposition of Randall
6 Katzenstein, R-A-N-D-A-L-L K-A-T-Z-E-N-S-T-E-I-N.

7 THE COURT: Go ahead.

8 BY MR. MAGRUDER:

9 "Q Let me -- you don't have to write a book for me in
10 response to this question, but if you could just trace for us
11 your work history after you graduated from Syracuse University,
12 that would be helpful.

13 "A Well, the first three years I was an accountant—two years
14 public, one year internal audit. Part of the public was at
15 Pricewaterhouse, and I did some tax work for about six months.
16 And Continental Grain is the internal -- this firm I worked
17 for. It's the second largest private company in the world at
18 the time. I worked there for about a year. I traveled about
19 95 percent of the time.

20 "And then I got recruited to Merrill Lynch
21 Commodities. I worked at a bunch of brokerage firms. Merrill
22 was fine, but I couldn't really get into the institutional
23 space there without being in their head office, and I was
24 working in Morristown.

25 "Anyway, so I worked at a few firms in the beginning,

Mc62Pla1

"Katzenstein -

1 kind of nothing too long, and then worked at finally a place
2 where I could co-head the bond desk, cash bond desk at Revco.
3 Revco is not around anymore, but it became the largest futures
4 company in the world. It was the largest futures company and
5 commodity firm in the world. I worked there for 16 years. I
6 left --

7 "Q Approximately what period of time was that?

8 "A Well, I left in '01, so minus 16.

9 "Q Got it.

10 "A I think I got there around '87, early '87, late '86,
11 something like that, '87, and the bond desk part was like five
12 years. And then I left Revco in May of '01, relatively good
13 timing, and I started OBEX. And we became -- I think we became
14 an NFA member very quickly, National Futures Association. And
15 we applied for our FINRA license, SEC, well, to be regulated by
16 the SEC. And that went relatively quickly, too. I remember
17 even getting interviewed by -- in Boston by the -- I don't know
18 if it was FINRA, probably it was FINRA, and so this was May I
19 started. But within a year, I had my SEC registration. Since
20 '01 I have had OBEX, so it's been a while.

21 "Q Did there come a time when you had any business dealings
22 with Mark Nordlicht?

23 "A Well, when I was at Revco we did business, I believe.

24 MR. MAGRUDER: This is Mr. Katz Stein's attorney:

25 "The question to you was did there come a time when

Mc62Pla1

"Katzenstein -

1 you did business with Mr. Nordlicht?

2 "A Well, not with him directly ever, I mean with companies
3 where he would -- you mean him with personally or with his
4 company?

5 "Q Could be either, but I gather from what you have said so
6 far it sounds like you had dealings with companies he worked
7 for, is that fair to say?

8 "A Yeah, yeah.

9 "Q Please tell us about that then.

10 "A I'm trying to remember if I ever did business with him
11 before he had Platinum and where we actually did business. I
12 know we went -- I know we started to start a company in Taiwan
13 trading S Rands, D Rands and things like that, brokering
14 computer chips. That's the right place to go, Taiwan. He sent
15 a representative there with me to look at it. It never
16 happened. And at the end of the day, I mean, I enjoyed it, I
17 enjoyed traveling, but we ended up not doing it. So, but I
18 spend a couple of weeks in Taipei. I don't know if I ever did
19 business with him before Platinum offhand.

20 "Q So I gather there was a time when you began working with
21 him at Platinum?

22 "A Yeah.

23 "Q And how did that develop? When did -- how did it start?
24 Let's put it that way.

25 "A Well, we had an office in Carnegie Tower next to Carnegie

Mc62Pla1

"Katzenstein -

1 Hall, and I don't remember the first time I may have gone
2 there. And he was living in New York. I was still living -- I
3 still live in Westchester. And I don't remember how that
4 occurred. I believe I may have contacted him. It's possible.
5 I had, over my career at OBEX, I hired traders to work for me
6 from time to time. So I hired -- we just had a few
7 relationship -- I know I introduced him to Barclays Bank, and
8 they were doing a fair business -- a fair amount of business
9 with Barclays for Platinum. I just don't remember when that
10 occurred. I don't remember. We were managing some money for
11 Platinum at one point in a separately managed account that
12 Platinum set up. I had two British traders—one in New York,
13 one in London—very experienced people, you know, 30, 40, 30
14 years of experience.

15 "Well, let's assume -- I'm not sure, but let's assume
16 we were starting a futures relationship, where we were clearing
17 some of the futures. I think it might have been when he was
18 doing a lot -- no, no, before -- it was before. I introduced
19 him to Triland, too. Triland is part of Mitsubishi Corp. It's
20 not around anymore. They closed their U.S. office. But
21 Mitsubishi I believe still owns Triland in the U.K., and I
22 think Triland was after Barclays. But I think we only
23 introduced him to Barclays for the management we were doing,
24 not for the regular business. I think Triland was the regular
25 business which was mainly options. They were doing arbitrage,

Mc62Pla1

"Katzenstein -

1 something between European and American options, and we were
2 introduced to Thailand -- Triland. It was an important
3 account, and it grew and it grew really well. There weren't
4 really any issues of substance. I mean, you always have a
5 little issues with clients, but nothing of major consequence.
6 And then, you know, I would periodically invest -- visit -- I
7 would visit periodically their office at Carnegie Tower.

8 "Q When you say their offices, you are referring to Platinum?

9 "A Right.

10 MR. MAGRUDER: This is Mr. Katzenstein's attorney:

11 "Mr. Katzenstein, the question pending is what does
12 OBEX -- just briefly describe OBEX.

13 "A So OBEX introduces business and it brings business to, you
14 know -- well, we have contracts with Mitsubishi, Triland,
15 Mitzui, Mizuho Bank, currently with Macquarie, Cantor
16 Fitzgerald, different, different quality firms. We only let
17 ourselves do business with quality firms because our clients,
18 first of all, demanded quality firms. So we couldn't really
19 bring an account to a middle sized firm too often. They needed
20 big balance sheets, generally speaking. So we introduce and
21 then we oversee the clerical side. Generally on the statement
22 it says introduced by OBEX Securities, so the clients get to
23 see that. I like that, too. It's sort of like a form of
24 advertising. And but we have no say. I mean, we don't really
25 take orders."

MC6Cpla2

"Katzenstein -

1 "Q. And in addition to Mark Nordlicht, did Murray Huberfeld --
2 are there other individuals at Platinum with whom you dealt
3 over the years?

4 "A. Many.

5 "Q. And if you could just name the ones you've dealt with most
6 frequently, that would be helpful.

7 "A. Well, I have a staff. I have an operations staff. So
8 they would tend to deal with them more than I would deal with
9 them. Generally, it's the client's operations staff. It's
10 more my role to bring in the clients and get it set up. And
11 then I'm big on delegating. I'm pretty good at it.

12 So it would be my staff that would deal with the
13 day-to-day, and I would notice if there was, like, a repetitive
14 email or something's not getting done because I'm usually cc'd
15 on things or we have, like, a group email. But, you know, at
16 Platinum, I met David Bodner. I didn't have any dealings with
17 him, but I met him. I knew Uri -- you know his last name.

18 "Q. Landesman, by any chance, L-a-n-d-e-s-m-a-n?

19 "A. Landesman, yeah.

20 "Q. Okay. Did there come a time when you became familiar with
21 an outfit called Beechwood?

22 "A. Yes.

23 "Q. And when was that, approximately?

24 "A. You know, whatever the emails show. I mean, five years
25 ago, maybe.

MC6Cpla2

"Katzenstein -

1 "Q. Was it your understanding that Beechwood was an entity set
2 up by Platinum?

3 "A. I don't know. I mean, at a later point, possibly after
4 this email or before, I went up to, you know -- I saw similar
5 people at Platinum Management, senior management sitting at
6 Beechwood. One would assume there's a relationship.

7 "Q. And those senior management people who were both at
8 Platinum and Beechwood included Mark Nordlicht?

9 "A. Correct.

10 "Q. And Murray Huberfeld?

11 "A. Correct.

12 "Q. And David Bodner?

13 "A. I don't believe I ever saw him there.

14 "Q. David Levy?

15 "A. I think the first time I met him was there at Beechwood.

16 "Q. What was the basis of your understanding when
17 Mr. Nordlicht -- you're having a discussion with Mr. Nordlicht
18 about coming to work at Platinum and Beechwood, why is
19 Mr. Nordlicht the person to be talking to in connection with
20 that conversation?

21 "A. There was no one ever else to talk to there about any
22 decision.

23 "Q. At Beechwood?

24 "A. Well, at Platinum, for sure. And Beechwood, I hardly knew
25 anyone there. I didn't know anybody, and Murray I didn't like

MC6Cpla2

"Katzenstein -

1 to talk to, so kind of left it to Mark.

2 "Q. Let's go to that. Is Murray Huberfeld another person who
3 you recall being part of Beechwood?

4 "A. I saw him there, yeah.

5 "Q. And part of Platinum?

6 "A. Murray -- I saw him in the -- like I said, they shared
7 that floor at one point in the Carnegie Tower. And then I
8 think they moved -- I don't know where Murray was. Platinum --
9 oh, yeah, Murray had a higher floor in the building, but in the
10 old floor, they shared space. And you would, once in a while,
11 I guess you would see Murray, but I really had no interactions
12 with him to speak of.

13 "Q. Did you have an understanding as to whether Mr. David
14 Bodner was in charge or managing Platinum or Beechwood?

15 "A. I knew there was a relationship. Your question that -- I
16 didn't know anything per se. I felt -- I believed there was a
17 relationship, somewhat of a partnership between Bodner and
18 Murray, but Murray was more the active and Bodner was more the
19 passive person.

20 "Q. Had you met Mr. Bodner, let's say, when you were
21 considering the position at Platinum around 2013, 2014?

22 "A. No.

23 "Q. Had you ever met him?

24 "A. Had I ever? I think, yeah, I met him one -- a couple of
25 times. I kind of liked him.

MC6Cpla2

"Katzenstein -

1 "Q. Did you discuss a potential position at Platinum or
2 Beechwood with Mr. Bodner?

3 "A. Unlikely.

4 "Q. And why is that?

5 "A. Just, just don't see why I would do that, and I hardly had
6 a relationship with him to discuss it. I don't believe so.

7 "Q. Was there a time when either Platinum or Beechwood
8 considered investing in OBEX?

9 "A. Beechwood -- well, there was a discussion with me and Mark
10 investing in OBEX, yeah.

11 "Q. You and Mark who?

12 "A. Nordlicht.

13 "Q. You and Mark Nordlicht?

14 "A. Yes.

15 "Q. Investing in OBEX?

16 "A. There was a discussion about it, yes.

17 "Q. Let me understand, OBEX is your company?

18 "A. Yes.

19 "Q. So the discussion was about you taking personal money and
20 Mark Nordlicht taking personal money and investing in OBEX?

21 "A. Oh, I didn't care how --

22 MR. MAGRUDER: Katzenstein's attorney: "Objection to
23 form."

24 "A. We wanted more capital. We were talking --

25 "Q. "We," OBEX?

MC6Cpla2

"Katzenstein -

1 "A. OBEX -- going, self-clearing, becoming a bigger firm. As
2 I said earlier, we only introduced business. So having real
3 capital, like 20 million, 30 million, 30, 40, 50 million --
4 because I went to Mr. Aerni, did I ever introduce? I must have
5 went to 20, 30 firms to talk about raising capital for OBEX,
6 private equity shops.

7 "Q. So would it be fair to say that you recall discussing
8 Platinum and Beechwood making an investment into OBEX, that was
9 a potential conversation?

10 "A. Yes.

11 "Q. How far did it get?

12 "A. Well, with Platinum, nowhere. With Beechwood, it got to a
13 serious discussion and -- between me and their attorney. I
14 think Chris was his name.

15 "Q. Thomas?

16 "A. Yeah, I believe so. Christian Thomas, maybe. But there
17 were -- they were looking. There was one consideration that
18 they were going to invest some serious capital into OBEX and I
19 decided not to go forward.

20 "Q. I'm going to show you an email, which I'm going to mark as
21 RK5, and I'd like you to just take a quick look at it and see
22 if you can tell me if you recall this correspondence.

23 Katzenstein 5, excuse me, instead of RK5.

24 CTRL6331008 was marked as Katzenstein 5 for
25 identification as of this date.

MC6Cpla2

"Katzenstein -

1 What I would like you to do, once you've glanced at
2 it, take a look at the page that's marked. Well, they're all
3 the same control number. This is CTRL633108, and there is an
4 email on the third page which I gave you, that's right at the
5 bottom of the page.

6 "A. You mean 26?

7 "Q. May 25th, Sunday, May 25, 5:33 p.m. It's right at the
8 bottom of the page, and it begins "Dear David, Murray, and
9 Mark."

10 MR. MAGRUDER: There's an objection from
11 Mr. Katzenstein's attorney: "Murray, David, and Mark."

12 There is a comment from plaintiff's counsel, "Yes,
13 Murray, David, and Mark."

14 "A. May 25?

15 "Q. Right at the bottom.

16 "A. Okay. "Dear Murray, David, and Mark." Okay. Thank you.

17 "Q. Would you mind taking a look at that sentence and then the
18 following page and tell me if you broadly recognize the email.

19 "A. I mean, I wrote it. So, yeah. This is when we were
20 discussing them investing into OBEX.

21 "Q. Okay. And "them," who do you understand "them" to be
22 here?

23 "A. "Them" meaning Beechwood. In this email, it's Beechwood.
24 Like I said, I don't care, per se, as long as I felt it was a
25 solid amount of money that would be good for our firm. So, in

MC6Cpla2

"Katzenstein -

1 this case, it's Beechwood.

2 "Q. Okay. My question is similar to the one I asked you when
3 you were having a discussion with Mr. Nordlicht regarding a
4 position at Platinum and Beechwood.

5 Specifically why, if you can recall, when you were
6 writing to Beechwood in connection with a potential investment
7 by Beechwood into OBEX, were you writing to Murray -- like I
8 said, Murray Huberfeld, David, and Mark, why were they the
9 persons to write to for a Beechwood investment?

10 "A. I felt they were the guys in charge, I guess.

11 "Q. How do you think you would have come to that
12 understanding?

13 "A. They were the only guys I was talking to.

14 "Q. Did they represent that they had authority to make
15 decisions on Beechwood investments?

16 "A. It's unlikely they said those words.

17 "Q. Did they imply they had authority to make decisions on
18 Beechwood investments?

19 "A. I don't know. I don't know.

20 "Q. Would you have written this email to them otherwise?

21 "A. Unlikely.

22 "Q. If you look back at Exhibit 5, right on that page where
23 the email gets cut off, but it says "Dear Murray, David, and
24 Mark."

25 "A. Right.

MC6Cpla2

"Katzenstein -

1 "Q. I just want to point you to the "to" field where it says
2 Murray Huberfeld, and then bodnerang@gmail.com, and Mark
3 Nordlicht. Just tell me if you see that.

4 "A. Yeah. I don't know why I have Bodner on here.

5 "Q. Did you understand that that was David Bodner's email
6 address?

7 "A. Yeah, I just -- as I was just saying, I don't know. I
8 mean, all the thousands of emails, this might have been one of
9 the only ones where I've included him. And it might be because
10 I saw it and maybe there's an email before this that they wrote
11 to me with his name there because he would not be the one I
12 would ever really include.

13 "Q. If you flip to the very front page now, the very --

14 "A. And I -- yeah. So this says David. Yeah. I'm sorry.
15 When I was thinking David Levy before, I thought we were
16 talking "David."

17 "Q. David Bodner is who you're referring to; right?

18 "A. Apparently, but that might have been a courtesy.

19 "Q. I want to show you an email, which we'll mark as
20 Katzenstein Exhibit 6.

21 "A. I think I recall why --

22 MR. MAGRUDER: Comment from Mr. Katzenstein's counsel:
23 "There's no question pending about this document.

24 "Q. Do you wish to modify --

25 MR. MAGRUDER: Another question from Mr. Katzenstein's

MC6Cpla2

"Katzenstein -

1 counsel: "Is it part of your answers?"

2 "A. Well, that David Bodner, because the first time I met
3 Murray, David was --

4 MR. MAGRUDER: Comment from Mr. Katzenstein's counsel:

5 "Do you want to clarify a prior answer you gave?"

6 "A. Well, no, it's just the David there. I know why I added
7 David now.

8 "Q. Why is that?

9 "A. Because I think he was -- he was in the first meeting that
10 I had with Murray.

11 "Q. Concerning Beechwood?

12 "A. No, concerning the investment into OBEX.

13 "Q. The investment by Beechwood into OBEX, excuse me.

14 "A. Like I said, whoever it was coming from, it was just the
15 first meeting, and I remember the first meeting, it was with
16 Murray and David.

17 "Q. And that email chain, though, concerns a potential
18 transaction between -- excuse me. A potential transaction
19 whereby Beechwood was going to make an investment into OBEX?

20 "A. Again, you're asking me -- I didn't care. I'd started with
21 Platinum and I think it ended with Beechwood.

22 "Q. That's fine.

23 I marked exhibit Katzenstein 8. It is an email --

24 MR. MAGRUDER: Mr. Katzenstein's counsel: "What
25 number are we on?"

MC6Cpla2

"Katzenstein -

1 Excuse me. Katzenstein 6. Katzenstein 6.

2 "Q. Just take a look at this email and then you can let me
3 know if you recognize it.

4 "A. There is no email. It's just the subject heading, you
5 mean?

6 "Q. Just the subject heading.

7 "A. Right.

8 "Q. Any reason to believe you didn't send this email?

9 "A. No, but I don't recognize it.

10 "Q. So it's from you to Mr. Nordlicht around May 2014. It
11 says the -- what does the subject say?

12 MR. MAGRUDER: Mr. Katzenstein's counsel: He's just
13 asking to you read the subject.

14 "A. "Mark, I am just going to send it out to Murray, David,
15 and you, unless you see a reason to hold off. Murray wants
16 it."

17 "Q. So who do you understand "Murray" to be in that?

18 "A. That's Murray Huberfeld.

19 "Q. And David?

20 "A. Well, normally I would have said it's David Levy, but
21 given what we just looked at, it's probably David Bodner.

22 "Q. Do you recall ever speaking with Murray Huberfeld or David
23 Bodner about the Black Elk bond?

24 "A. Never.

25 "Q. Establishing the account?

MC6Cpla2

Gerszberg - Direct

1 "A. I don't believe I ever did.

2 MR. MAGRUDER: Your Honor, that's the end of
3 Mr. Katzenstein. I understand our witness is here if you would
4 like to proceed.

5 THE COURT: Very good. Call your next witness.

6 MS. SHEN: Plaintiffs call Seth Gerszberg.

7 THE DEPUTY CLERK: Please take the witness stand.

8 SETH GERSZBERG,

9 called as a witness by the Plaintiffs,

10 having been duly sworn, testified as follows:

11 THE DEPUTY CLERK: State your name and spell it slowly
12 for the record.

13 THE WITNESS: Seth Gerszberg, S-e-t-h
14 G-e-r-s-z-b-e-r-g.

15 THE COURT: Counsel.

16 DIRECT EXAMINATION

17 BY MR. GLUCK:

18 Q. Good morning, Mr. Gerszberg.

19 A. Good morning.

20 Q. Did there come a time when you became introduced to
21 Platinum Partners?

22 A. Yes.

23 Q. Can you please tell the jury about that.

24 A. Maybe in 2013, a mutual friend introduced me to Platinum.

25 MR. GLUCK: Would you mind speaking up.

MC6Cpla2

Gerszberg - Direct

1 THE WITNESS: I'm sorry. How's that?

2 MR. GLUCK: Good.

3 A. 2013, I believe, I was introduced to Platinum through
4 mutual friends.

5 Q. And what was the context?

6 A. Potentially investing in my business.

7 Q. What was your business?

8 A. A clothing company. Originally, it was called Ecko Unltd.
9 Clothing. It was then we sold the brand and converted it into
10 a group of smaller brands and it was a platform that had retail
11 and wholesale.

12 Q. Was it called The Collective?

13 A. Eventually, the name migrated to The Collective.

14 Q. Did Platinum make an investment in The Collective?

15 A. Yes.

16 Q. Can you please describe it for the jury, very broadly.

17 A. It was supposed to fund -- it's been a long time, but it
18 was supposed to fund \$40 million of capital. We ended up
19 getting, over prolonged stages and timing, about \$15 million
20 ultimately. We ended up short on capital.

21 Q. Are you familiar with the name Over Everything?

22 A. Yes.

23 Q. Could you explain what that is and what the relationship is
24 to your business.

25 A. Over Everything was -- I don't remember the lot of company

MC6Cpla2

Gerszberg - Direct

1 names and I can't tell you how they were organized or
2 structured. There was probably 30 different corporate names,
3 so I can't tell you about the structure. Over Everything
4 happened to be a term utilized by Big Sean, the rapper, but I
5 don't recall specifically how that company was utilized or
6 involved.

7 Q. Within your clothing business?

8 A. Right.

9 Q. Okay. So just for a moment, could you just describe how
10 you founded your clothing business and then how it ended up?

11 A. Yes. I had started in 1993 with my partner, Marc Ecko, and
12 we ran the business unsuccessfully probably for about six years
13 and accumulated a lot of debt. Then, over time, we learned
14 enough about the mechanics of the business to pay back all the
15 debt that we owed and to go on to run a successful clothing
16 business that had multiple brands and retail locations and
17 wholesale.

18 Q. And you said they were unsuccessful, what happened?

19 A. The first six years, we lost \$6 million not knowing how to
20 run the apparel business and made lots of mistakes and
21 accumulated friends and family debt that we ultimately were,
22 you know, thankfully able to pay back.

23 Q. Did your clothing companies end up in bankruptcy?

24 A. Eventually did end up in bankruptcy.

25 Q. When did that occur?

MC6Cpla2

Gerszberg - Direct

1 A. Maybe in 2014.

2 Q. Were you aware of how or in what amount Platinum was
3 valuing its investment in your clothing company?

4 A. No, I don't recall.

5 Q. Did there come a time when you began to have a relationship
6 with Platinum, beyond that of a recipient of money?

7 MR. LAUER: Objection. Leading.

8 THE COURT: Overruled.

9 A. It was a time after we closed our business at the end of
10 2015 that I became more interested in how Platinum was able to
11 pay back investors because some of the money that was lent to
12 our company in 2015 was guaranteed by Platinum, but I was
13 ultimately responsible.

14 Q. Did you start coming into the office of Platinum?

15 A. Yes.

16 Q. When was that?

17 A. Around the beginning of 2016, I believe.

18 Q. And who asked you to come to the office?

19 A. Nobody.

20 Q. You just started coming in?

21 A. Yeah.

22 Q. And what would you do there?

23 A. Tried to understand the nature of the liquidity crisis in
24 2000 -- well, I won't say crisis. In 2008, I had \$200 million
25 of debt and the capital market had problems and I had to deal

MC6Cpla2

Gerszberg - Direct

1 with trying to get through my -- the hurdles I had with debt.
2 So I thought I understood how to operate companies that were
3 financially challenged. And so, I understood that there was
4 some -- there were liquidity challenges at Platinum as being
5 able to fund businesses such as mine. So I just wanted to see
6 if I could help provide some support to the investments that
7 they had that might materialize and have better yields which
8 would ultimately lead to repayment of the debt that I was
9 ultimately guaranteeing.

10 Q. You were trying to help them out based on some of the rough
11 experiences that you had?

12 A. Sure.

13 Q. Did Platinum Management know that your clothing business
14 had gone into bankruptcy?

15 A. Yes.

16 MR. LAUER: Could we have individuals, your Honor.

17 THE COURT: Well, when you say that Platinum knew your
18 clothing business went into bankruptcy, how do you know that
19 they did?

20 THE WITNESS: I told them.

21 THE COURT: You told hem. Who did you tell?

22 THE WITNESS: Mark Nordlicht primarily, and some of
23 the investment managers. I also remember meeting Murray
24 Huberfeld. I don't know if the bankruptcy came up at that time
25 because I might have met them previously or -- but I think they

MC6Cpla2

Gerszberg - Direct

1 both knew. I'm sure Mark knew.

2 BY MR. GLUCK:

3 Q. When you began going into Platinum's office to provide
4 guidance, did you assume a role where you began preparing a
5 presentation of PPVA's investment, investment positions and
6 financials?

7 MR. LAUER: Objection.

8 THE COURT: Well, as phrased, sustained.

9 Q. When you came into Platinum, did you play a role in
10 preparation of financials positions?

11 MR. LAUER: Objection.

12 THE COURT: Overruled.

13 A. As far as the financials, no.

14 THE COURT: So what did you do, other than sit there,
15 when you began coming to the offices?

16 THE WITNESS: So we took the financials, specifically
17 financials for each company, like profit and loss statements or
18 bank statements or balance sheets. I never looked at any of
19 those things. I was just trying to understand how much
20 leverage different positions had on them and how much potential
21 liquidity or value we created from those positions to
22 understand either by specific individual investments or by
23 group, whether or not there was suppressed value or the
24 opportunity to create further monetization for certain
25 positions.

MC6Cpla2

Gerszberg - Direct

1 Q. So you were looking at Platinum -- when you say Platinum
2 positions, you mean Platinum investments?

3 A. Places -- again, at first, I really wasn't looking at
4 specifically what part of Platinum, but just the idea of
5 investments that Platinum made and to companies that seemed to
6 have, you know, a -- that I could understand fast enough to put
7 into some kind of assessment or group or understand enough to
8 see whether or not there was more liquidity that could be
9 created for supporting those positions.

10 Q. And when you refer to the word "leverage," is that a word
11 that relates to debt somehow? What is leverage?

12 A. Again, I'm not -- I'm not trying to posit that I'm a
13 financial guru or anything, I'm just a regular person assessing
14 business and saying does this business look like it is right
15 for an investment or for debt, which would create some
16 opportunity for the business beyond where it is today.

17 Q. Let me rephrase.

18 What did you mean when you used the word "leverage" in
19 your answer?

20 A. Same thing, that you could either create an opportunity to
21 borrow more money against it or create the opportunity to sell
22 pieces of it. Just finding value.

23 MR. GLUCK: Mr. Parson, will you please call up
24 Plaintiffs' Exhibit 907.

25 We would seek to move this into evidence.

MC6Cpla2

Gerszberg - Direct

1 MR. LAUER: No objection.

2 THE COURT: Received.

3 (Plaintiffs' Exhibit 907 received in evidence)

4 MR. GLUCK: If you highlight, Mr. Parson, where it
5 says "from," and then Mr. Gerszberg's email address. I just
6 want to build that foundation.

7 Q. Mr. Gerszberg, can you see on the screen in front of you
8 this email?

9 A. Yes.

10 Q. Do you see where it says seth@thecollective.com?

11 A. Yes.

12 Q. Is that your email address?

13 A. It is.

14 Q. And you're corresponding with Mark Nordlicht?

15 A. That's what it says.

16 MR. GLUCK: Drop that down now.

17 Q. In the meeting below, do you recall meeting with Murray
18 Huberfeld and David Bodner around this time, January 2016?

19 A. Can I read the email to orient what you're asking about?

20 Q. Sure.

21 A. Because I don't remember.

22 MR. GLUCK: Mr. Parson, you can flip to the end of the
23 chain if that's available.

24 THE WITNESS: Just a moment. I'm just reading.

25 MR. GLUCK: Let us know when you're finished reading.

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Gerszberg - Direct

1 THE WITNESS: Yes.

2 MR. GLUCK: This is the second page.

3 Let's start here, and when you've reviewed this
4 paragraph, let us know.

5 THE WITNESS: Can you go back to let me see the --

6 Q. Ready?

7 A. Yeah.

8 Q. So let's begin. Who is Mr. David Levy?

9 A. Another manager at Platinum.

10 Q. And who is Mr. Andrew Kaplan?

11 A. He was involved in investments or investors.

12 Q. Platinum guys?

13 A. Platinum.

14 Q. And so you're being copied on this email. What do you
15 understand Mr. Nordlicht to be telling you here?

16 A. I don't really recall. It seems like at the time, I --
17 this is early on when I first got to spending time at
18 Platinum's office and I think I was trying to understand the
19 historical returns for Platinum and for the two different, I
20 guess, funds at Platinum.

21 Q. You see where it says the clause, and also update for
22 presentations.

23 MR. GLUCK: Mr. Parson, can you highlight that.

24 A. Yes.

25 Q. Do you recall preparing a presentation during your time at

MC6Cpla2

Gerszberg - Direct

1 Platinum during this period?

2 A. I doubt this was the reference for that presentation.

3 MR. GLUCK: Let's go to the next page.

4 Q. When you say that presentation, do you have a particular
5 presentation you're thinking about?

6 A. Yeah, I remember preparing a presentation like the
7 following month, I believe, that grouped together some of
8 Platinum's investments, but I wouldn't have -- I don't believe
9 I would have -- I would have thought to have done this this
10 quickly. This is probably related to the investor
11 presentation.

12 MR. GLUCK: Mr. Parson, if you go to the January 6th
13 line on the email from Mr. Gerszberg, saying meeting Murray and
14 David on the 10th floor of your building.

15 Q. Do you see that?

16 Were you meeting Mr. -- well, who is Murray and David?

17 A. It was Murray Huberfeld and David Bodner.

18 Q. Why were you meeting them?

19 A. I think -- it's hard to remember. It was a number of years
20 ago. I think the cadence was that Mark wanted -- Mark
21 Nordlicht, I think, wanted David and Murray to -- or maybe I
22 suggested meeting with them. I'm not quite sure what, you
23 know, whether it was my request or Mark's, but I think that --
24 I think that Mark wanted more support from David and Murray.

25 Q. What did you understand Mr. Huberfeld and Mr. Bodner's role

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Gerszberg - Direct

1 at Platinum to be?

2 MR. LAUER: Objection.

3 THE COURT: Overruled.

4 A. That they had historically been more involved, that they
5 were not really as involved, that they had historically had
6 management shares in some of these vehicles and that they were
7 clearly less involved at that time. And over the course of
8 time, merging timelines, this is five years ago, but they were
9 trying to -- or they were planning giving back their -- or they
10 had pledged to give back their ownership of Platinum.

11 Q. Speak into the microphone.

12 A. I'm sorry. My understanding was that whether it was at
13 this time or months later, this is fairly early on, so I was
14 still trying to understand what was going on, but it was clear
15 that they weren't as involved in the business that, you know,
16 that Mark wasn't getting as much participation or support as he
17 may have years earlier and I think that Mark indicated at some
18 point they were selling their shares or they were giving back
19 their shares and somebody else was going to buy into the
20 management.

21 MR. GLUCK: Mr. Parson, could you bring up DX 144.

22 I'm not sure this is in evidence yet, but we would
23 move it into evidence.

24 THE COURT: Received.

25 (Defendant's Exhibit 144 received in evidence)

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Gerszberg - Direct

1 Q. You're not on this email, but I'm going to ask you about it
2 because it talks about you. Do you understand that?

3 A. Uh-huh.

4 Q. Do you know who a guy named Kerry Propper was?

5 A. I think he was the -- he was like a -- Mark was living in
6 Israel and he was the lead -- he was like the lead -- he was
7 acting president or CEO, some lead leadership role in Platinum
8 when I got there.

9 Q. He was like an interim manager while Mark Nordlicht was in
10 Israel?

11 A. You know, I don't know technically, but that, practically,
12 that's what it was, that was what was going on.

13 Q. Did you step into that role following Mr. Kerry Propper?

14 A. I wasn't trying to step into a role or take a title, I was
15 trying to move things along and understand the business. So it
16 didn't look -- Kerry wasn't very actively involved in the
17 position, so I mostly was focused on, you know, trying to
18 understand the positions and how to deal with the needs of the
19 businesses that were in the portfolio.

20 Q. Are you familiar with the fact that there were actually two
21 funds, PPVA and PPCO?

22 A. Yes.

23 Q. They're both referenced in this email; right?

24 A. I didn't write the email, but I'm reading it for the first
25 time.

MC6Cpla2

Gerszberg - Direct

1 Q. I'm just asking, do you see where it says between PPCO
2 transfer and PPVA, we should be okay?

3 A. Again, you're asking me to comment on an email I still
4 haven't even gotten to the point where you're asking the
5 question. I mean, if it says it, then it's there.

6 Q. Do you see it?

7 A. No. Why don't you highlight it.

8 MR. GLUCK: Mr. Parson, can you highlight it. Okay.

9 Q. Here's my question: In your role, would you deal with both
10 PPCO investments and PPVA investments in the issues you were
11 dealing with?

12 A. Initially -- at some point, it was more material in terms
13 of how funds could be generated for positions, but initially I
14 didn't really -- I wasn't really that focused on the
15 distinction, I was just focused on positions that were -- that
16 had value and positions that didn't. This is pretty early on.
17 I wasn't as -- I was starting to understand the nuances between
18 the two funds, but my primary objective at the time was just to
19 find opportunities to be helpful. So it wasn't specific to
20 PPCO or PPVA. I don't know that I even knew which fund
21 invested in my business until sometime later on.

22 MR. GLUCK: Okay. Unhighlight it, Mr. Parson.

23 Q. Mark Nordlicht, on January 6th, 2016, after saying scared
24 out of my mind, says he sat with Murray and David today to try
25 and pressure them to help to no real avail. Got one million

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Gerszberg - Direct

1 guaranteed from them, each of them. No cash that -- and a
2 token gets me on the subway.

3 Here's my question: Did you meet with Mr. Huberfeld
4 and Mr. Bodner on January 6th?

5 A. It's clear this says that I did, so I must have. I
6 wouldn't remember the date or --

7 Q. What would you have talked about?

8 A. That Mark felt pressure about liquidity.

9 Q. Anything else?

10 A. At this time -- again, this is very -- I can't parse out
11 the sequence of this timeline of when I had a conversation with
12 Murray and David about what I could tell you. You're reminding
13 me by this email that on the 6th specifically, I met with them
14 and talked about -- and I do now recall specifically indicating
15 that Mark -- there were financial calls or something that were
16 of concern to Mark at that time. And the nature of that
17 business was that they were -- a lot of the positions required
18 additional funds to -- for them to stay healthy.

19 Q. And this is not a memory test, by the way. I'm going to
20 take you through documents.

21 MR. GLUCK: Mr. Parson, please call up PX 908.

22 Q. So this is following in the day and Mark's asking you what
23 happened?

24 A. Yeah.

25 MR. GLUCK: And now please call up PX 909.

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Gerszberg - Direct

1 I move to admit 908.

2 MR. LAUER: No objection.

3 THE COURT: Received.

4 (Plaintiffs' Exhibit 908 received in evidence)

5 MR. GLUCK: Now please call up 909.

6 Q. Take a moment to read this email, please. Let us know when
7 you're done.

8 MR. GLUCK: While you're reading it, we'll seek to
9 move this email into evidence.

10 MR. LAUER: No objection.

11 THE COURT: Received.

12 (Plaintiffs' Exhibit 909 received in evidence)

13 A. Okay.

14 Q. So you're writing this email and then the "to," it says Jay
15 SanFillipo. Do you see that?

16 A. Yup.

17 Q. Who's that?

18 A. I believe he was somebody in finance -- somebody in
19 finances at Platinum. He's like a lead finance guy.

20 Q. And then it's copied N. Manela. Do you remember who that
21 was?

22 A. I think other finance guy, Mark Manela or something like
23 that. I don't know.

24 Q. We know who Mark Nordlicht.

25 Who's Dan Grabon?

MC6Cpla2

Gerszberg - Direct

1 A. It's got a Collective address, I should remember him.

2 Sorry.

3 Q. Someone on your side?

4 A. Yeah. Maybe somebody doing data collection or something
5 for me. I'm not sure.

6 Q. Now, just to set your head, we just looked at a set of
7 emails where you had had a meeting with Mr. Bodner and
8 Mr. Huberfeld on January 6th.

9 Do you see here, this is a January 8 email, it says
10 you're preparing for a meeting with Murray and David. Do you
11 see that?

12 A. Yes.

13 Q. Mark is Mark Nordlicht?

14 A. Sure.

15 Q. Murray is Murray Huberfeld?

16 A. Yup.

17 Q. David is David Bodner?

18 A. Right.

19 Q. So you're going to have another meeting with them?

20 A. I mean, that -- again, that was my decision. I don't know
21 if anybody was expected, you know, they weren't calling me to
22 have a meeting with them. At that time, I think it was
23 probably my election to have meetings with them. This would be
24 if I had more gravitas to get financial information by saying
25 I'm meeting with the principals.

MC6Cpla2

Gerszberg - Direct

1 Q. Because David Bodner was a principal; right?

2 A. Again, I wasn't privy to specific documents or how the
3 business was run. What I did know was that there historically
4 was a number of people that were involved in the business. It
5 seemed like it was Mark and Murray and David that were involved
6 for a long time. At some point, the office moved to a
7 different location, you know, it was clear Mark was running the
8 show. There were other people also, Landesman and Bernie that
9 were around, also, but they seemed to be the people that had
10 the most, you know, historical experience, exposure to the
11 business, and that was probably keeping -- I certainly believed
12 at the time that the historical retained earnings that I had
13 seen were most heavily invested with the members that were
14 originally part of what that management team was. I don't know
15 the management team -- or ownership, I should say, is a more
16 fair way of saying --

17 Q. You're asking Joe and Naftali to back off as accounting
18 types for a bunch of employee financial information for 2013 to
19 2016?

20 A. Yup.

21 Q. Because you wanted to incorporate that into your
22 presentation somehow?

23 A. Again, I'm not sure the specific motivation of this
24 particular document in the context of what I was trying to put
25 together. Eventually, there was a document that was put

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Gerszberg - Direct

1 together. I don't believe that compensation was really part of
2 what I ultimately put together. I'm assuming that this was
3 important to me at the time.

4 Q. At the time you were evaluating this issue?

5 A. Definitely, it seems clear.

6 Q. Now, do you recall, not SanFillipo or -- do you recall a
7 gentleman named David Steinberg?

8 A. Yes.

9 Q. Do you recall working on a presentation with David
10 Steinberg?

11 A. Yes. Again, I don't know that this was specifically part
12 of it or not.

13 Q. Understood.

14 A. I don't remember, I should say. I'm sorry.

15 MR. GLUCK: Mr. Parson, will you please call up
16 PX 588.

17 MR. LAUER: 586 or 588?

18 MR. GLUCK: 588, which has previously been admitted
19 into evidence.

20 Q. After you've reviewed the email, just let us know.

21 MR. GLUCK: This is also January. It's already in
22 evidence.

23 Q. Ready?

24 A. No. I'm sorry. I'm a slow reader.

25 Okay.

MC6Cpla2

Gerszberg - Direct

1 Q. My first question is, do you know why Mark Nordlicht copied
2 you on this email?

3 A. What I noticed happening at Platinum was that it seemed
4 like Mark was an alarmist at times. So it seemed like, oh, the
5 sky is falling, and it was because maybe there was a capital
6 call by a trading call. So the trading bank would ask for more
7 coverage, so they'd have to put in like an extra million
8 dollars or something or \$2 million because something was now
9 out of the effective leverage. And because there was so much
10 money in the trading positions, a failure to perform at the
11 million or \$2 million level, it wasn't a million or \$2 million
12 concern, it would be whether or not the bank would continue to
13 provide leverage for other positions that were -- that would
14 impact things more significantly.

15 So it sounds crazy for a fund that's that big to be
16 impacted by a million or \$2 million, but what was constantly
17 happening is money was coming in from odd places or sometimes
18 personal money was put in. So I know that at some point, Mark
19 mortgaged his own properties to put money into the company, it
20 would seem like a fair validation that he had a high level of
21 belief that there was value that he was going to bring out, but
22 regardless, there was definitely times where it felt like a
23 million or two, the sky was going to fall.

24 With that said, that was a position that lasted, while
25 I was there, for probably six months. So, for six months, it

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Gerszberg - Direct

1 was maybe \$1 million mattered that much, but it was about to be
2 terrible, but at the same time, the business was able to
3 ultimately still continue operating and funding different
4 positions poorly for much more time. So it wasn't like, you
5 know -- and what I started to see was that there was a lot of
6 trapped value potentially in positions.

7 So it makes an understanding, personally, you know,
8 from my experience where you have to make deposits for future
9 things or you're payables are not lined up with your time and
10 your receivables. I understood that, a lot of times, Mark
11 would say things we each get money today, and he did, but it
12 sounded like, you know, it sounded like there was only
13 \$1 million worth of value there at the time, which wasn't a
14 fair reflection.

15 And I definitely know throughout the time that he did
16 not feel that --

17 THE COURT: I think you've answered the question.

18 THE WITNESS: All right.

19 THE COURT: I think you have answered the question,
20 sir. That means you don't speak further. Got it? Do you
21 understand me? Do you speak English? Do you understand what I
22 just said? Yes or no?

23 THE WITNESS: What was the question?

24 THE COURT: Ladies and gentlemen, we're going to give
25 you your midmorning break at this time. 15 minutes.

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Gerszberg - Direct

(Continued on next page)

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Gerszberg - Direct

1 (Jury not present)

2 THE COURT: So, you will forgive me, but my job is to
3 make sure that the rules of evidence are being followed and
4 when, inadvertently, someone does not follow the rules of
5 evidence, I have to cut them off. So I interrupted you because
6 you had long answered the question that was put and you were
7 giving interesting information that may have been interesting
8 to you or to counsel, but was not part of what was admissible
9 to the jury. My job is to protect the jury from this evidence.
10 My point is when I say to you that's the end, you need to end
11 your answer. Do you understand?

12 THE WITNESS: Yes, I understand. What I don't
13 understand is whether or not I answered the question because I
14 don't remember the question, and I definitely now understand
15 that I need to make sure that I answer the question.

16 THE COURT: So if you don't understand the question,
17 if counsel puts a question to you --

18 THE WITNESS: I understood it, I just don't remember
19 it. I was talking for so long.

20 THE COURT: I'm sorry? You have to speak into the
21 microphone.

22 THE WITNESS: I was talking for so long, clearly I
23 didn't remember the question. So I just wanted to know if I,
24 in fact, answered it.

25 THE COURT: I appreciate it. And I'm not trying to be

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Gerszberg - Direct

1 critical. I just want to make sure that you understand that my
2 job is to make sure that the jury does not hear stuff that is
3 not admissible under the rules of evidence. Since you're not a
4 lawyer, you don't know what the rules of evidence do;
5 unfortunately, I do.

6 THE WITNESS: And if you would have told me --

7 THE COURT: So, if I have occasion to say that's the
8 end of your answer, that means, I'm saying in a polite way,
9 it's time to end your answer.

10 THE WITNESS: If it was polite, I would have
11 understood. I don't understand mitigating me and telling me,
12 asking if I speak English in front of the jury.

13 THE COURT: Well, because you were glaring at me and
14 giving me a very hard time on something that I think you should
15 have understood, but now we're on the same wave, yes.

16 THE WITNESS: In whatever mitigated fashion I'm
17 sitting here, yeah.

18 THE COURT: Good. We'll see you all in ten minutes.
19 How much longer do you have on direct?

20 MR. GLUCK: 25 minutes.

21 THE COURT: Okay.

22 (Recess)

23 (Continued on next page)

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Gerszberg - Direct

1 (Jury present)

2 THE COURT: Please be seated. Okay, counsel.

3 BY MR. GLUCK:

4 Q. Mr. Gerszberg, if PPVA or PPCO, I suppose, but let's focus
5 on PPVA, if they needed \$1 million and they were \$900 million
6 in asset funds, didn't they have any liquid assets?

7 MR. LAUER: Objection. Leading.

8 MR. GLUCK: The witness has proved himself to be
9 worthy of, I think, leading questions.

10 THE COURT: I'll allow it.

11 A. I can't speak to money they had in the bank or didn't or
12 money that was coming in or wasn't. It was constantly money
13 coming in and money that needed to be paid, more money that
14 needed to be paid than not. I can tell you only from personal
15 experience that I had a company that people valued at
16 \$600 million and sometimes I was a million short.

17 Q. Here's the thing, that wasn't my question. Are you
18 familiar with what's called a level 1 asset?

19 A. No.

20 Q. Stocks that trade on the exchange, there's a price for
21 them; right?

22 A. Uh-huh.

23 Q. Do you know whether PPVA had any stocks?

24 A. I wasn't looking at current --

25 Q. You didn't look at them?

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Gerszberg - Direct

1 A. At PPVA's stock position, no. I might have asked somebody
2 about it, but I haven't traded stocks. I think I bought one
3 stock -- you're looking funny at me, so I'm kind of curious to
4 see what you got because I don't know stocks.

5 Q. You didn't know that all of PPVA stockholdings were locked
6 up in a collateral account with Beechwood?

7 MR. LAUER: Objection.

8 THE COURT: Sustained.

9 MR. GLUCK: We would move this email and its
10 associated attachment into evidence.

11 MR. LAUER: It's in evidence.

12 THE COURT: It's in. All right. What's the number,
13 does anyone know?

14 MS. SHEN: 590.

15 MR. GLUCK: 590.

16 Q. Mr. Dan Grabon, he was somebody that worked with you at The
17 Collective?

18 A. I don't remember. It says The Collective, probably did.

19 Q. And he's sending this email to Mr. Naftali Manela?

20 A. Again, it's what it says.

21 Q. Do you remember if he was the CFO of Platinum, something
22 like that?

23 A. I thought he was an operations guy, like a COO-type guy.

24 Q. Mr. David Steinberg, do you remember him?

25 A. Yep, absolutely.

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Gerszberg - Direct

1 Q. And then you?

2 A. Yep.

3 Q. Did you all work on this presentation together?

4 A. I was asking for data from a lot of people.

5 Q. Do you recall you saw you had meetings with Mr. Bodner,
6 Mr. Huberfeld on the 6th and you're preparing for another
7 meeting in the emails we saw on the 8th. Did you then have
8 another meeting with Mr. Bodner and Mr. Huberfeld?

9 A. You tell me.

10 Q. Let's look at the presentation.

11 Do you recall preparing these slides?

12 A. I definitely was involved in preparing them. I definitely
13 was leading the narrative of the story. May have been somebody
14 else that was actually preparing the specific slide. I
15 definitely was directing it with data I was collecting, working
16 with the people on the list.

17 Q. Why would you be counting \$20 million from David and
18 Murray's investor list?

19 A. Can you go back to the preceding slide?

20 Q. Sure.

21 A. I'm trying to get orientated.

22 Can I ask you --

23 Q. I think that's a PPCO slide --

24 A. Is this a midterm document --

25 THE COURT: I'm sorry. He's not allowed to answer

MC6Cpla2

Gerszberg - Direct

1 that.

2 MR. GLUCK: That's correct.

3 Q. We've gone back to the preceding slide, which I believe was
4 a PPCO slide and this is a PPVA case.

5 A. Can you just go back a little bit to the beginning.

6 MR. LAUER: Your Honor, I have a hard copy, if that
7 would help.

8 THE COURT: Yes.

9 THE WITNESS: Thank you.

10 MR. LAUER: May I hand it directly?

11 THE COURT: Yes.

12 THE WITNESS: Thank you. I'm sorry. It's been five
13 years. I'm trying to -- okay. So what was the question?

14 Q. The question is, why do you recall, if anything, as to why
15 you were putting \$20 million next to David and Murray's
16 investor list on this particular slide that's in front of you
17 on your screen?

18 THE WITNESS: May I give context?

19 THE COURT: Maybe I can help you out, but you have to
20 speak into the microphone.

21 THE WITNESS: May I give context?

22 THE COURT: Yes. So you prepared this conversation?

23 THE WITNESS: Yes.

24 THE COURT: And what was the purpose of the
25 presentation?

MC6Cpla2

Gerszberg - Direct

1 THE WITNESS: This is only 12 days after I started
2 hanging out at the Platinum office. It was really quick.

3 THE COURT: Right. But what were you trying to
4 accomplish?

5 THE WITNESS: I was trying to figure out the value of
6 various different key positions and the liquidity requirements
7 to fund them. So I was trying to figure out where money would
8 come from and what money was needed.

9 THE COURT: So when you say in this slide, "How do we
10 raise \$80 million in PPCO (\$50 million for PPVA and \$30 million
11 to stay in fund)," how did you arrive at those figures?

12 THE WITNESS: So the first thing is that any of this
13 information was cobbled together from various different people
14 in a very short period of time without understanding more
15 context than was provided to me. So I was trying to utilize
16 the data that I was collecting and figure out if there was a
17 clean path forward. So when I looked at --

18 THE COURT: I'm sorry. When you say a clean path
19 forward, meaning there were problems to be overcome, yes?

20 THE WITNESS: I mean, it was obvious that there was --
21 that organizationally looking at certain ways to -- yes, the
22 answer is that there were challenges needed to be overcome --

23 THE COURT: The answer is yes.

24 THE WITNESS: Yes. Yes.

25 THE COURT: Okay. So you came up with this proposal

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Gerszberg - Direct

1 to raise \$80 million, yes?

2 THE WITNESS: It was just an idea, yes. Approach,
3 yes. Yes.

4 THE COURT: And you were presenting it to a number of
5 the people in charge?

6 THE WITNESS: Yes.

7 THE COURT: Including Mr. Bodner, among others?

8 THE WITNESS: Mr. Bodner was -- the primary reason for
9 trying to put this together --

10 THE COURT: Who was present at this meeting when you
11 gave this presentation?

12 THE WITNESS: Originally, Mark Nordlicht.

13 THE COURT: No one else was there?

14 THE WITNESS: Maybe Naftali and David, if they were
15 there, I wouldn't remember. They were inconsequential. If
16 there was more people -- but it was Mark.

17 THE COURT: And the first item in your suggestion of
18 how the company could raise \$80 million is David and Murray's
19 investment list.

20 THE WITNESS: Yes.

21 THE COURT: And David is Mr. Bodner?

22 THE WITNESS: Yes.

23 THE COURT: And the question counsel was putting was
24 how did you come up with that suggestion?

25 THE WITNESS: I simply looked at the money that was

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1 invested in these funds and whose name was next to them.

2 THE COURT: But I guess the question is --

3 THE WITNESS: Actually, I have to ask who brought
4 these people into the fund over the course of time.

5 THE COURT: But you felt, based with all the
6 reservations and qualifications you have mentioned, this was
7 very new and all preliminary, but you were of the view that you
8 could bring in other investors, yes? You didn't say
9 \$100 million, you didn't say \$2 million, you came up with this
10 \$20 million from some basis, yes?

11 THE WITNESS: Yes, a placeholder there. I was also
12 the only person that believed that.

13 THE COURT: And when you say down at the very bottom,
14 additional debt from Beechwood, \$50 million, what did you mean?

15 THE WITNESS: I thought that Beechwood was
16 over-collateralized with some of their other positions.

17 THE COURT: And explain to the jury, who is not
18 familiar with these terms, what do you mean by
19 over-collateralized?

20 THE WITNESS: I felt that they took security positions
21 for money that they lent to Platinum that were more secure than
22 they needed to be and that a conventional lending opportunity
23 might provide more. Again, it was my -- that was a guess, that
24 they were -- that they didn't need that much security against
25 the positions that they had.

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1 THE COURT: Okay. Go ahead.

2 MR. GLUCK: And the Court anticipated the next item.

3 BY MR. GLUCK:

4 Q. In connection with that Beechwood security, do you recall
5 that Platinum's liquid assets, its stockholdings were trapped
6 in a third-party collateral account?

7 A. I was more focused on other positions than the one --
8 you're asking me about the stock, you're saying the stock
9 position, but I didn't really understand the stock trading
10 model or the benefits of it or how collateralized it was as
11 much as the other operating positions.

12 Q. But in your previous answer to the Court's question, you
13 suggested that Beechwood was over collateralized; right?

14 A. Yes.

15 Q. And wasn't the nature of that collateral that the stocks,
16 the liquid stocks --

17 A. I wasn't focused on liquid stocks, there were other
18 positions. So I'm not a stock guy, I'm an operating guy. So I
19 was focused on operating entities, I was focused on other
20 things, not the stock position or -- actually, you know what,
21 if you're referring to stocks with specific companies, then
22 maybe that's a way to look at it. I'm sorry. I apologize. If
23 it was in companies that had more value, I wasn't looking at it
24 from -- okay. So it's possible that --

25 Q. NVIDIA?

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1 A. Yes.

2 Q. That was a publicly traded stock; right?

3 A. Yeah, I was looking at it as a company with value.

4 Q. Implant Sciences?

5 A. Yes.

6 Q. So when I asked you the question about why PPVA couldn't
7 just sell some of its liquid stock on the stock market and get
8 \$1 million if it needed to, this was what I was referring to.
9 Did you have an understanding about why PPVA was in this
10 position that it didn't have \$1 million that it needed to to
11 meet some margin?

12 A. If you look at this document, I refer to the companies just
13 by the total dollar amounts that I thought there was value in.
14 So I was looking at it not as a stock draft, I was looking at
15 it as a number of expressed equity.

16 Q. I think you've answered the question. Let's move to the
17 next slide.

18 Do you recall the email when you were asking about
19 expenses from the financial folks, the accounting folks at
20 Platinum?

21 A. Expenses, I don't recall any specific email about expenses,
22 but I'm sure I asked the question.

23 Q. Today, remember we looked at that email and you were asking
24 about employee costs?

25 A. It was about compensation?

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1 Q. Yeah.

2 A. If it was about expenses, too, as relates to these
3 positions you're showing me in front, I didn't see that on the
4 email, but --

5 Q. Do you have an understanding about what PPNE redemptions
6 are?

7 A. What's the question?

8 THE COURT: What did you mean by that?

9 THE WITNESS: It's redemptions from whatever this
10 fund, PPNE, there were outstanding requests for repayment of
11 \$15 million.

12 Q. But PPVA didn't have the money to meet those redemption
13 requests, did it?

14 A. I guess not.

15 Q. And, in fact, due to the fact that they could not meet
16 those redemptions, there was interest being charged.

17 Do you see the next line?

18 A. Sure.

19 Q. And so you were factoring this into your analysis; right?

20 A. Yes. No, I'm sorry. The \$7 million is not the interest on
21 the \$15 million.

22 Q. What is the \$7 million in interest?

23 A. It couldn't be interest on the \$15 million. It's probably
24 interest on whatever the balance was.

25 Q. You think it could have been a different balance?

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1 A. I believe it was a different balance.

2 Q. Probably a larger balance?

3 A. I would assume yes. \$7 million is a lot of interest.

4 MR. LAUER: Objection.

5 THE COURT: Overruled.

6 You're saying the interest rate would be much too high
7 if it was just the interest on the \$15 million, so it must be
8 something larger?

9 THE WITNESS: Correct.

10 Q. So there may have been other redemptions that you're not
11 talking about right here on which interest was payable?

12 A. No, it's possible that interest was simply due on this
13 fund. This fund, I believe, was debt. So I believe this fund
14 was paid as it was a debt fund. It was like if you were to put
15 in money and you got a return. So the interest was on the
16 fund, I guess.

17 Q. PPNEs weren't -- do you know what PPNEs were?

18 A. I'm trying to remember. I think it's -- I think it was the
19 fund that lent money to PPVA.

20 Q. Were you speculating that PPNE was a separate fund?

21 A. I don't get stuck on the vernacular. It was different than
22 PPVA.

23 Q. Do you see where it says BAM total interest per year? What
24 is that?

25 A. I don't remember the acronym.

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1 Q. Beechwood, is that familiar?

2 A. Yes.

3 Q. Let's assume that BAM is an acronym for Beechwood.

4 A. Okay. Beechwood total interest per year, \$16 million.

5 Q. Why was PPVA paying Beechwood \$16 million a year in
6 interest?

7 MR. LAUER: Objection.

8 THE COURT: Ground.

9 MR. LAUER: Scope.

10 THE COURT: Overruled.

11 Do you know?

12 A. For money that Beechwood lent to, I guess, the Platinum
13 businesses or Platinum.

14 Q. Could it have been debts being held by Beechwood in
15 PPVA's --

16 THE COURT: Sustained.

17 Q. First of all, New Mountain, \$30 million. Do you have an
18 understanding of what that is?

19 A. First time seeing these things in five-plus years, but I
20 think they owed New Mountain \$30 million.

21 Q. Do you remember why?

22 A. You'd have to remind me.

23 Q. It says June through September redemptions, \$40 million.
24 Had there been \$40 million worth of redemptions?

25 A. I assume so. It says \$40 million and I was probably

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1 putting data together that was provided to me, I would imagine.

2 Q. And PPVA couldn't pay this?

3 A. No.

4 Q. December redemptions, same question.

5 A. Same answer.

6 MR. GLUCK: Next slide, please, Mr. Parson.

7 Q. Do you remember a company called Implant Sciences?

8 A. Yes.

9 Q. What was it?

10 A. A company that had trace technology for checking for, I
11 guess, bomb residue on passengers for airlines and other types
12 of security-related stuff.

13 Q. It was one of PPVA's good investments; right?

14 MR. LAUER: Objection.

15 A. Seemed like it.

16 THE COURT: Sustained.

17 Q. Was PPVA's interest in Implant Sciences valuable?

18 A. At this stage, my -- the numbers here -- and the reason why
19 I didn't know the stocks is because I wasn't looking at the
20 stock price or the warrants or any of the components. All I
21 took was what I thought was the delta between an investment and
22 value. So, in this presentation, I looked to have \$50 million
23 of value at this time based on what someone told me.

24 Q. I'd like to ask you about the third bullet, and it says net
25 cash, \$50 million, sale price, 80 to \$100 million, less

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1 \$35 million for Monstant. Do you see that?

2 A. Uh-huh.

3 Q. What was your understanding, the reason you had to deduct
4 \$35 million in the event that Implant Sciences --

5 A. Maybe -- I would be guessing.

6 Q. Do you remember, just now, we talked about the Monstant
7 collateral --

8 THE COURT: I'm sorry. Counsel, if you're making
9 objections, you have to speak louder, because I can't hear you.

10 MR. LAUER: I'm sorry, your Honor. Summary judgment
11 on Monstant.

12 THE COURT: Well, the question in the present,
13 somewhat half-baked form is objectionable. The objection is
14 sustained. But put another question and we'll see a more
15 substantive question being raised by defense counsel.

16 Q. Do you understand why, if PPVA sold its interest in Implant
17 Sciences, it would have to deduct \$35 million from Monstant?

18 THE COURT: So that was asked and he said he would be
19 guessing. So asked and answered.

20 Q. None of these happened, PPVA is facing a \$150 million
21 deficit. Do you recall that?

22 A. Yep.

23 Q. What would that mean?

24 A. That's the total amount that was owed at that time or would
25 be owed, I suppose, or it was anticipated being owed. It's a

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1 total of those previous pages.

2 Q. Now the last bullet --

3 THE COURT: It was already clear to you, even from the
4 limited experience with the company, that they were facing a
5 very substantial deficit, yes?

6 THE WITNESS: Yes.

7 THE COURT: Okay. Go ahead.

8 Q. Now, does the last bullet posit that if PPVA gets
9 \$50 million from Monstant and a net amount from Implant
10 Sciences, there's still going to be a \$50 million deficit?

11 A. That's what it says.

12 MR. GLUCK: Next slide, please.

13 THE COURT: Counsel, you've reached the limit you've
14 asked for, but I'll give you five more minutes.

15 MR. GLUCK: Mr. Parson, can you zoom in on this.

16 Q. Do you recall this chart of significant investments,
17 Mr. Gerszberg?

18 A. I don't recall this page. I'm sorry.

19 Q. Do you have any doubt that you prepared it?

20 A. Was it in the presentation?

21 Q. Yes.

22 A. I don't recall.

23 Q. Do you have an understanding, as you sit here today, what
24 encumbered and unencumbered means within the fourth and fifth
25 columns?

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Gerszberg - Direct

1 A. Probably if it was cross collateralized. I don't know.

2 Q. Do you see where it says oil and gas in the first row?

3 A. Yup.

4 Q. Do you see how it says the unencumbered amount is zero?

5 A. Yes.

6 Q. PPVA's oil and gas investments worth zero?

7 MR. LAUER: Objection.

8 A. No.

9 MR. GLUCK: I didn't finish my question.

10 THE COURT: Ground.

11 MR. LAUER: He's testifying.

12 THE COURT: Well, I think the question rephrased was,
13 was it your understanding that at the time that PPVA's oil and
14 gas investments were worth zero.

15 MR. GLUCK: And I had something to add, which was
16 unencumbered.

17 THE COURT: Unencumbered.

18 MR. LAUER: I have no objection to unencumbered or
19 encumbered.

20 THE COURT: Well, we're making great progress.

21 Do you understand the question?

22 THE WITNESS: I do understand the question. I'm just
23 taking a moment.

24 A. I think it's what it says. It says that it's encumbered.

25 So all of the value had been pledged for something that looks

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Gerszberg - Direct

1 like less than its value.

2 Q. In the interest of moving things along --

3 THE COURT: You better move it along because I'm
4 giving you two minutes, and I mean two minutes.

5 Q. \$312.6 million, was that your calculation of the
6 unencumbered value of PPVA's assets?

7 A. Is this page PPVA only? Is that what you're -- it doesn't
8 have PPVA on it. Does it say PPVA on it?

9 MR. GLUCK: Can I answer?

10 A. Can you ask the question again?

11 MR. GLUCK: My understanding is it's purely PPVA.

12 A. Can you ask the question again.

13 Q. The \$312.6 million, was that your calculation of the
14 unencumbered value of the assets listed on this page?

15 A. Yes.

16 Q. One question on one of the assets that I can't skip over.
17 Over Everything, that was your company; right?

18 A. I don't know what specifically they put into Over
19 Everything or what value was attributed at that time.

20 Q. For the avoidance of doubt, in January of 2016, had your
21 clothing business already gone bankrupt?

22 A. The clothing business definitely went bankrupt -- no, it
23 was not operational. What was left were a number of other --
24 were the brand names and the brand names, whatever value those
25 had, and the software development that we had in place.

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Gerszberg - Cross

1 MR. GLUCK: Noah, please go to what we want from David
2 and Murray's slide, since we have one minute left.

3 Q. Do you recall going to Murray Huberfeld's house and
4 presenting this to David Bodner and Murray Huberfeld, this
5 particular presentation?

6 A. I remember going to his house and I believe I did present
7 this. I believe it was after I prepared this.

8 MR. GLUCK: Thank you. No more questions.

9 THE COURT: Cross examination.

10 THE WITNESS: Can I see that piece of evidence. I
11 just want to make sure -- never mind. It's okay.

12 CROSS-EXAMINATION

13 BY MR. LAUER:

14 Q. Good morning, Mr. Gerszberg.

15 A. Good morning.

16 Q. I'm Eliot Lauer. We have not met, have we?

17 A. No.

18 Q. A few moments ago when the Judge was asking you some
19 questions about who is attending the meeting working on this
20 presentation, you said that in addition to you thought Mark
21 Nordlicht was participating, you said Naftali and David. Do
22 you remember that?

23 A. Yes.

24 Q. The David was David Levy; right?

25 A. More David Steinberg.

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Gerszberg - Cross

1 Q. Okay. It wasn't David Bodner?

2 A. No.

3 Q. Bodner wasn't part of these organizational meetings where
4 you're trying to figure out how much liquidity these assets
5 needed; right?

6 A. Not at all.

7 Q. You mentioned that the -- one of your focuses in bringing
8 your own business experience here was to see how you could free
9 up trapped value in these companies; right?

10 A. Yes.

11 Q. Could you explain what you mean by trapped value and how
12 this inflow of cash, if you could get it, would free up the
13 value?

14 A. So if someone lends money -- so if I lent \$5 million to a
15 company that was -- let's say we were worth \$10 million, but I
16 secured it with all of the collateral of the \$10 million, plus
17 I also secured it with let's say another company that also
18 borrowed \$5 million. So I add the value of the \$5 million that
19 I lent secured by the \$10 million in one company, and also
20 cross collateralized, secured by another company that also had
21 maybe another \$5 million of value there. So if you announce
22 the position that the one lender basically had \$10 million of
23 value that was trapped by a \$5 million loan. And so, what I
24 was trying to find was a path to change the nature of the
25 over-collateralization from various different lenders to create

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Gerszberg - Cross

1 liquidity, and that liquidity can be used to make some obvious
2 decisions either by getting other investors to buy into these
3 companies, sell these companies, or just create some value from
4 the positions that look very healthy.

5 Q. So you were also asked a couple of questions on encumbrance
6 and value. Is it fair to say that one of the technical words
7 for what you were just describing is you could have \$20 million
8 worth of value encumbered with respect to just a \$5 million
9 loan?

10 A. Yes. Or \$5 million on each company. So at least 10 free
11 million dollars of capital encumbered by -- \$20 million of
12 equity value, yes, by a \$5 million loan.

13 Q. So you could have a company that is worth hundreds of
14 millions of dollars, but if it hasn't done what you want it to
15 do, which is free up all the available value for leverage, you
16 could have a company worth hundreds of millions of dollars that
17 has a hundred million dollars of loans, but all of it is
18 encumbered; right?

19 A. Yes. So I firstly had the same experience --

20 THE COURT: No, you've answered.

21 THE WITNESS: Okay.

22 Q. So one of the things you were looking at and what the
23 presentation is addressing is the oil and gas assets were all
24 encumbered; right?

25 A. Yes.

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Gerszberg - Cross

1 Q. But you believed that there was a lot of trapped value
2 there and the goal was to figure out how to work with the
3 lenders and free up that trapped value?

4 A. Across the whole portfolio.

5 MR. LAUER: So let's take a look at 590. Can we get
6 that back up on the screen.

7 Q. Now the period of time that we're addressing is January of
8 2016; right?

9 A. Yes.

10 Q. You weren't there in this kind of help-out mode in 2013,
11 2014, 2015; right?

12 A. Nope.

13 Q. And you said you started to basically come to the office in
14 order to help out. Did you tell Mark Nordlicht that you were
15 doing that?

16 A. It says I'm coming into the office to see if I can be
17 helpful.

18 Q. Was Mark the one that coordinated with you and explained
19 what he thought you could do to help free up value?

20 A. Mark gave me his ideas and I listened and followed whatever
21 I thought was appropriate.

22 Q. You wanted to try to raise \$200 million for PPVA; right?

23 A. I don't know if I wanted to raise \$200 million. I wanted
24 to identify that there was a need for a very significant amount
25 of capital.

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Gerszberg - Cross

1 Q. Was it the view of the managers that were working with you
2 and the financial people that were working with you that if you
3 could pull this off, if you could get the kind of money that
4 you thought was needed, that these companies could do well?

5 A. My thesis that I presented to Mark was that if the firm
6 seemed to have the legal right to convert from a hedge fund to
7 a private equity fund and if it converted to a private equity
8 fund, it wouldn't have to address the redemptions or the run of
9 the money that was being called from it. By doing that, they
10 would have an extended period of time to stay focused entirely
11 on working on the operating positions instead of juggling
12 redemption requests from investors. And while the investors
13 wouldn't get their cash right away, all the investors would
14 benefit from the focused effort on these investments that seem
15 to have real value if they could be particularly focused on and
16 if the management team wasn't worried about investor
17 redemptions. So I was trying to make the argument that the
18 hedge fund should use its legal right to switch to a private
19 equity fund to be able to focus on the business and not worry
20 about the more significant amount of money which would be
21 required for the redemptions.

22 Q. Thank you. You also described earlier in your testimony
23 sort of these short-term needs where \$1 million or \$2 million
24 could, if they couldn't get it, could have a significant
25 negative impact on the trading positions; right?

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Gerszberg - Cross

1 A. Yes.

2 Q. I know you've said that you weren't involved in the stocks
3 or the bonds or the options trading, but did you have a sense
4 of magnitude or the size of the book that was being traded at
5 Platinum in PPVA?

6 MR. GLUCK: Objection. Knowledge.

7 A. I don't remember.

8 THE COURT: The objection would have been sustained,
9 but given the answer, we'll let it stand.

10 Q. You did know that while you weren't focusing on it, a
11 portion of PPVA's assets consisted of this whole trading group;
12 right?

13 A. Yes.

14 Q. And Mark was the trader by training?

15 A. Yes.

16 Q. And he had a group of traders which was separate and apart
17 from the guys that were managing these various, what we'll call
18 real businesses?

19 MR. GLUCK: Objection.

20 THE COURT: I think the form is a little vague.

21 MR. LAUER: Sorry, your Honor. I'll rephrase it.

22 Q. They had a group of traders that were trading stocks,
23 bonds, options, and other instruments?

24 A. It seemed to me there were things that were trading daily
25 and then there were these positions that were more -- that the

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Gerszberg - Cross

1 firm didn't trade as much. I was focused on the things that
2 didn't trade as much.

3 MR. LAUER: If you would turn to the page in this
4 write-up, PPVA potential inflows, 100 to \$150 million. Thank
5 you.

6 Q. So second item, do you have it, Mr. Gerszberg, PPVA
7 potential inflows?

8 A. Yes.

9 Q. So you're hoping that one of the sources of liquidity would
10 be \$50 million from PPCO, right, assuming you could raise the
11 money that you talked about earlier on this presentation?

12 A. I'm sorry. I apologize. I'm just reading.

13 Q. Sure. Take your time. Tell me when you're ready.

14 A. Sorry. Go ahead.

15 Q. First line item is \$50 million from PPCO; right?

16 A. Yes.

17 Q. And you were asked some questions earlier about hoping to
18 raise \$80 million for PPCO and you would then propose that 50
19 of that be used as somehow to help PPVA's assets; right?

20 A. Yeah. I don't know the mechanism specifically. I don't
21 remember.

22 Q. Then the next line is something called management share
23 class, 50 to \$100 million. Can you tell us, to the best of
24 your recollection, what that was referring to?

25 A. So Mark was trying to sell the management share classes

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Gerszberg - Cross

1 that David and Murray had to somebody else. So they were going
2 to give up their management share class and that person would
3 put in 50 to \$100 million into the fund.

4 Q. So David Bodner and Murray Huberfeld would exit and their
5 shares in Platinum Management or the company would be available
6 to new investors to come in as partners?

7 A. Yeah. I mean, they weren't management at the time when you
8 say exit, but that was the idea of the value.

9 Q. Did you know any of the individuals that were in discussion
10 with Mark or were on a short list --

11 A. I had heard about these different people for sale or from
12 other places, but I didn't interact with them.

13 Q. Did you know that he was talking with Marcos Katz?

14 A. Yes. Well, I know some guy named Marcos, I don't know the
15 last name, but there was a couple names that kept coming up.

16 Q. By the way, did you see Michael Katz in the office at that
17 time?

18 A. It was a grandson --

19 Q. Grandson of Marcos Katz.

20 A. He was in, yeah.

21 Q. Had you heard of Marcos Katz?

22 A. I'm remembering -- was he from Brazil, was he Brazilian or
23 something. These are names that came up. I don't remember at
24 this point. I wasn't involved in the specifics.

25 THE COURT: It was your understanding that he had a

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Gerszberg - Cross

1 lot of money?

2 THE WITNESS: I would imagine moreover he was talking
3 to that 50 to \$100 million of liquidity had money.

4 THE COURT: By the way, in this slide that refers to
5 the management, that's referring to the entity called Platinum
6 Management?

7 THE WITNESS: I don't know the --

8 THE COURT: I mean, you weren't using this term as an
9 everyday noun. Were you using it to identify a specific
10 entity, yes? If you know.

11 THE WITNESS: Now you're exposing my ability to
12 integrate the word "noun" with the question.

13 THE COURT: If the answer is you don't know, you don't
14 know.

15 THE WITNESS: I understood that there would be a big
16 investment that would go into the fund and they would take the
17 benefit of whatever historically was -- the other historical
18 owners had received.

19 THE COURT: Go ahead.

20 BY MR. LAUER:

21 Q. So you could have referred to this colloquially as the
22 owner class; right?

23 A. Yeah, absolutely. In fact, to clarify, if that was the
24 question, then I was disappointed and surprised at how little
25 anybody knew, besides Mark, as it related to the operating

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Gerszberg - Cross

1 positions. That was the ultimate outcome of all of this, was
2 that I was incredibly frustrated at how little -- the reason I
3 went to -- the reason -- the question was -- I remember the
4 question now, you know, why would I be on an email about going
5 to Mark instead of David and Murray, it's because nobody else
6 was going because everybody else knew they weren't involved and
7 they weren't running it. So I was going in trying to get them
8 to participate.

9 The critical thing is what it says at the end, which
10 is I couldn't get them to participate. They weren't running --
11 ultimately, they had no say in what happened with either
12 Beechwood or Platinum because the end result here was they only
13 do the -- it says, as it relates to David and Murray, they'll
14 only help if they see the possibility of extricating themselves
15 in the long run. They need to to see there is a plan to make
16 things work afterwards --

17 THE COURT: I think you've answered the question.

18 THE WITNESS: That's it.

19 Q. So if you turn to that page, the David and Murray page,
20 help us figure out short-term liquidity. What did you mean by
21 that?

22 A. I was hoping they'd put in money. It wasn't much they were
23 willing to do.

24 Q. Did you ask David Bodner and Murray Huberfeld to help out
25 with the short-term liquidity?

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Gerszberg - Cross

1 A. I did.

2 Q. Would that be in the form of a loan?

3 A. I believe that that was the form that it was going to take.

4 Q. And what did Mr. Bodner tell you?

5 A. I don't remember. I mean, it was clear that he -- it
6 didn't -- this presentation was only to allow Mr. Bodner and
7 Huberfeld to understand the merit of this idea, of converting
8 the hedge fund into a private equity fund and the fact that
9 there could be value, but what I found was that they weren't --
10 they didn't know any of this stuff --

11 THE COURT: I need to cut you off because the
12 question, I'll ask you to just respond to the question.

13 The question was, and what did Mr. Bodner tell you?

14 THE WITNESS: I don't know.

15 THE COURT: And the answer which you gave initially
16 was I don't remember. That was the answer to the question.

17 THE WITNESS: Okay.

18 THE COURT: Go ahead, counsel.

19 BY MR. LAUER:

20 Q. Did Mr. Bodner tell you that he was familiar with all of
21 the details of these operating companies?

22 A. It was just the opposite. It was clear that he wasn't.

23 MR. LAUER: Could we have PX 588.

24 Q. I'm not going to ask you to read the email, which you were
25 shown before, but if you could turn closer to the bottom where

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Gerszberg - Cross

1 it says go to Izzy or Garfunkel or Schroen, and say I know you
2 don't normally invest in funds, but I need a favor. We have
3 this fund that is healthy, so much so we are closing for a year
4 because we don't want to dilute returns.

5 Do you know who Izzy is, or Izzy Englander?

6 A. That was a name that I'm only reminded of seeing this. I
7 don't know.

8 Q. Do you know Mr. Schroen?

9 A. It was probably Ruby Schroen, maybe, I would probably guess
10 that.

11 Q. Who's Ruby Schroen in the Jewish business community?

12 A. It's a wealthy individual.

13 Q. What about Izzy Englander?

14 A. I don't know him.

15 Q. Have you heard of Millennium Fund?

16 A. I have, but --

17 Q. How about Garfunkel, do you know that family?

18 A. I guess I'm not really in the know of rich Jews.

19 Q. Right above the "it's embarrassing," it says we have 35
20 more -- I'm sorry. Go up three more lines. It says Shlomo
21 Yehuda offered to help. Why not tell him you didn't want to
22 put him in until you got comfortable? But at this point, we
23 have PPCO, which we think we can do north of 25 percent for the
24 next few years, and if he put in 15, we have 35 more raised and
25 frum peoples' money will be salvaged.

MC6Cpla2

Gerszberg - Cross

1 What does it mean when he says frum people?

2 A. Religious people.

3 Q. Do you know this Shlomo Yehuda he's referring to?

4 A. Yes.

5 Q. Is that Mr. Rechnitz?

6 A. I believe so.

7 Q. He's what we would call uber wealthy in California?

8 A. Yes.

9 Q. And he's heavily involved in philanthropy, helping support
10 people, helping institutions?

11 A. I'm not a follower, but --

12 MR. GLUCK: Objection.

13 THE COURT: Sustained.

14 Q. I'd like to show you exhibit 592. Take a moment to look at
15 the two paragraphs of this email.

16 MR. LAUER: These are all in evidence.

17 Q. Tell me when you've read it and are ready.

18 A. Yup.

19 (Continued on next page)

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Mc62Pla3

Gerszberg - Cross

1 BY MR. LAUER:

2 Q. Okay. So David Steinberg writes to Mr. Manela "taken
3 altogether, they show that with the flows (including Apollo)
4 and with some success with Agera, VSTA, Echo, Desert Hawk, we
5 can still produce a decent return despite the interest expense
6 of the additional debt (after the reduction of the rate to 7
7 percent)."

8 Do you know who Apollo is?

9 MR. GLUCK: Objection. Personal knowledge. No
10 foundation.

11 THE COURT: Sustained.

12 BY MR. LAUER:

13 Q. Did you discuss with Mr. Steinberg that overtures had been
14 made to Leon Black's company, Apollo, to have them put money
15 in?

16 A. There was definitely discussion. I don't know about
17 overtures to his company or to who, but we definitely had a
18 meeting with Apollo and there was discussions with Apollo about
19 the opportunity for them to provide more funding to the fund.

20 Q. All right. And this was all to help free up the trapped
21 value?

22 A. Um-hmm, yes.

23 THE COURT: So in the subsequent paragraph, there are
24 two terms there that I just want to make sure. What is your
25 understanding of what is meant by BK? Do you see that in the

Mc62Pla3

Gerszberg - Cross

1 sentence?

2 THE WITNESS: BK is bankruptcy.

3 THE COURT: Bankruptcy.

4 THE WITNESS: Uh-huh.

5 THE COURT: And the more difficult question what is
6 *rachmanus*.

7 THE WITNESS: Mercy.

8 BY MR. LAUER:

9 Q. So in the second paragraph that the Court directed you to,
10 Steinberg is telling Manela they can't get the extra money, the
11 funds will need to gate. What does, when we are talking about
12 a hedge fund or investment fund and we use the term "gate,"
13 what does "gate" mean?

14 A. I never invested in hedge funds, but my understanding was
15 that a gate would prevent redemptions, would stop money going
16 out back to investors. Investors have the ability to take
17 money. Every quarter, they could ask for their money back. So
18 if there were investors asking for redemptions, putting a gate
19 up would stop those redemptions from happening. At that point,
20 you know, you are presumably not getting more money in. This
21 is the reason I kept arguing for the private equity conversion,
22 because you wouldn't have to pay anything out and you could
23 realize this value. And there was value.

24 Q. And that's because these -- this company, this business
25 that had started out as a hedge fund relatively liquid had now

Mc62Pla3

Gerszberg - Cross

1 become pretty much a private equity fund?

2 A. They got stuck and the nature of the collateral that they
3 had pledged showed an optimism of it being short-term because
4 they -- in order to get money, they took -- they didn't care
5 about maybe rates or the collateralization. They were just
6 trying to answer a short-term need because they thought they
7 would clearly get out, because otherwise you wouldn't have
8 collateralized this much, and I think they didn't have a longer
9 term view. And so they must have been caught with positions
10 that took longer to realize or something. As a result, they
11 were stuck and they needed to focus on those positions.

12 Q. So when we talk about gating, right, in this context, it's
13 to temporarily stop the money going out so whatever money is
14 available can be used to run the businesses, right?

15 A. Yes.

16 Q. All right. So the gating doesn't mean you are going out of
17 business, it means you are stopping the outflow of investor
18 funds for the time being, right?

19 A. Correct.

20 Q. And there were a number of related party loans, right?

21 MR. GLUCK: Objection.

22 Q. I know you didn't write this e-mail, but the Court asked
23 you about the bankruptcy and --

24 THE COURT: No, I just asked him what the -- you
25 introduced the first paragraph and asked him about it, and I

Mc62Pla3

Gerszberg - Cross

1 allowed that because there was no objection, although there
2 could have been. Then I thought since the jury saw this right
3 in front of them, they should know what the two words were that
4 were not part of everyday language for some of the jurors, like
5 BK and *rachmanus*, and that's all the Court asked.

6 So put another question, counsel.

7 MR. LAUER: I was going to get there in a second.

8 BY MR. LAUER:

9 Q. Are you familiar with a concept in bankruptcy called
10 equitable subordination?

11 MR. GLUCK: Objection.

12 THE COURT: Sustained.

13 MR. LAUER: All right.

14 THE COURT: That's also objectionable on grounds that
15 it's a matter of law which is strictly for the Court.

16 BY MR. LAUER:

17 Q. Have you had an experience in a commercial bankruptcy where
18 the owners also have loans and, while third parties have their
19 loans treated as debt and higher up on the food chain, the
20 owners sometimes have their loans treated as equity so they are
21 lower down in the food chain?

22 MR. GLUCK: Same objection.

23 THE COURT: Yes, in addition, the objection to the
24 multiple compound components of that question needs to be
25 sustained.

Mc62Pla3

Gerszberg - Cross

1 MR. LAUER: I will leave it at that and I won't go
2 further.

3 THE COURT: Seems like a prudent thing to do.

4 MR. LAUER: Okay.

5 THE COURT: You have more time than you asked for, but
6 I do want to remind you that we need to break at 12:25 for
7 lunch because I have a matter at 12:30.

8 BY MR. LAUER:

9 Q. I am showing you Exhibit 393, PX 393, if we can show that
10 up.

11 This is an e-mail May 3, 2016. Really just interested
12 in the very top line. Do you recall basically telling Mark
13 that you needed a physical office at Platinum?

14 A. Yup.

15 Q. And Mark responded: "You officially have my office. I'll
16 send out a memo. Or better yet, tell Bodner he can't come in
17 anymore and take the other corner." Did you end up taking that
18 office?

19 A. I don't recall, but it was a joke because he wasn't there
20 anyway.

21 Q. When you discussed with Platinum obtaining financing for
22 your clothing businesses, with whom at Platinum did you discuss
23 that matter?

24 A. Predominantly Mark.

25 Q. And when you would have discussions with Platinum with

Mc62Pla3

Gerszberg - Cross

1 respect to the amount of funding you were getting and the
2 timing of the funding, did you have any of those discussions
3 with David Bodner?

4 A. Never.

5 MR. LAUER: We offer 393, sorry, PX, but we offer it.

6 MR. GLUCK: No objection.

7 THE COURT: Received.

8 (Plaintiff's Exhibit 393 received in evidence)

9 BY MR. LAUER:

10 Q. You were asked a number of questions about the company
11 called NVIDIA, that was the company that you said had something
12 to do with bombs, bombs or airplanes? No. I got that wrong
13 okay. Straighten me out. You were asked about NVIDIA, right?

14 A. I believe so.

15 Q. And you were asked about Implant?

16 A. Yes.

17 Q. I may have it confused them. I apologize. What was
18 Implant again?

19 A. A company that did trace detection for bombs.

20 Q. And did you know that some of these technological companies
21 and biopharmaceutical companies whose stock was owned by PPVA
22 were restricted stock?

23 A. I didn't really have clarity or familiarity with the
24 components to the restrictions outside of the fact that they
25 may have been -- the entire portfolio or piece of the portfolio

Mc62Pla3

Gerszberg - Cross

1 was maybe pledged as a guarantee as relates to trading
2 restrictions. I didn't know that.

3 Q. Okay. So you didn't know whether they owned more than 5
4 percent or had technical Securities and Exchange Commission
5 restrictions that would prevent immediate sale?

6 A. I don't even know that 5 percent was immediate sale. They
7 told me.

8 Q. Okay. At a certain point in time did Mr. Trott, who is the
9 businessman and the liquidator here for PPVA, did he authorize
10 a lawsuit against you?

11 A. I don't know who authorized the lawsuit.

12 Q. But you were sued?

13 A. Absolutely.

14 Q. And did there come a time when Mr. Trott authorized his
15 lawyers to file a stipulation and order of voluntary dismissal?

16 A. I don't know the legal terms. At some point we settled. I
17 got a little money.

18 Q. In connection with that, did you receive any funding from
19 PPVA?

20 A. I received some money at the end of the settlement.

21 Q. And just in general terms, could you tell us what the
22 settlement was?

23 A. It sucked.

24 Q. That's pretty general. Was it a commercial settlement?

25 A. Not -- it wasn't commercially reasonable in my mind.

Mc62Pla3

Gerszberg - Cross

1 THE COURT: This is, Counsel --

2 A. And I --

3 THE COURT: Excuse me.

4 I think we need to move on and I think we need to
5 conclude so I can make the matter that I have to preside over.
6 So you can ask more questions after the lunch break, but I
7 think we will break now for lunch.

8 MR. LAUER: May I just move this document, DX 506.

9 THE COURT: Any objection?

10 MR. GLUCK: No objection.

11 THE COURT: Received.

12 (Defendant's Exhibit 506 received in evidence)

13 THE COURT: Ladies and gentlemen, we will take our
14 lunch break at this time and resume at 25 after the hour, so
15 you will have a full hour for lunch. Have a good lunch and we
16 will see you shortly.

17 (Continued on next page)

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Mc62Pla3

Gerszberg - Cross

1 (Jury not present)

2 THE COURT: Real good. We will see you in an hour.

3 If there is something counsel needs to raise, it will have to
4 be later because I have to make this other matter, so we will
5 see you in an hour.

6 (Luncheon recess)

MC6VPLA4

Gerszberg - Cross

A F T E R N O O N S E S S I O N

1:30 P.M.

(Jury present)

THE COURT: All right. Counsel.

BY MR. LAUER:

Q. So I'd like to show you DX --

MR. LAUER: If we could pull up DX 747, if it's not in evidence, don't show it to the witness -- don't show it to the jury please. Is DX 747 in? We move DX 747.

MR. GLUCK: No objection.

THE COURT: Received.

(Defendants' Exhibit 747 received in evidence)

BY MR. LAUER:

Q. Do you have the email, Mr. Gerszberg?

A. Yes.

Q. Just going to ask you a few questions about this. So take a moment, if you need to refresh your recollection or your familiarity with it, and let me know when you're ready.

A. Okay.

Q. Thanks. So this document has two emails, right?

A. Yes.

Q. The top -- let's take the top email is an email by you to Mark Nordlicht on December 31, 2015, right?

A. Yes.

Q. So this was very early on in your trying to help Platinum,

MC6VPLA4

Gerszberg - Cross

1 right?

2 A. Yes.

3 Q. And you write Mark and you say: Attached below, my first
4 contact with Fabrice. Can you tell us who is or who was
5 Fabrice?

6 A. I recall him to be a significant investor in the Platinum
7 fund; and I guess he had a redemption.

8 Q. And then a couple of lines down, you say: The goal will be
9 to convert Fabrice, Frederick, statmour, etc., into the
10 management fund or eight percent with upside NE type debt
11 piece.

12 What does that refer to, converting these people into
13 the management fund?

14 A. So Mark had indicated that Murray and David were trying
15 to -- that he had the right to take the management fund equity
16 and allocate it to other people that invested in the fund.

17 Q. This was, again, the ownership issue?

18 A. Yeah.

19 Q. And trying to get these individuals and others to put money
20 in and replace Bodner and Huberfeld?

21 A. Right. The management is the -- is a name, but it's the
22 equity, I guess, or the ownership, I guess, not the operations.

23 Q. Did there come a time when Platinum owed you money?

24 A. They owed almost -- they owed my company money that they
25 promised to fund; they owed my family money from money we put

MC6VPLA4

Gerszberg - Redirect

1 into -- that was put in by my family to the fund.

2 Q. And did Mark give you a security interest in some assets to
3 help secure Platinum's obligations to you?

4 A. The money that was put into my company was put through
5 PPNE, which we thought had more liquidity.

6 Q. And did there come a time when you were in litigation with
7 the liquidator with respect to the collateral that was given to
8 you?

9 A. That was given to family members that I -- that I was
10 responsible to pay back if they lost their money.

11 Q. And in connection with that litigation, did you reach a
12 resolution with the liquidator?

13 A. Yes.

14 Q. And did your agreement with the liquidator contain mutual
15 releases?

16 A. Yes.

17 MR. LAUER: I have no further questions.

18 THE COURT: Redirect.

19 MR. GLUCK: Mr. Parson, will you please call up PX
20 Exhibit 590 and turn to the position slide.

21 REDIRECT EXAMINATION

22 Q. Mr. Gerszberg, when this was prepared, you had been working
23 within Platinum's offices for a couple of weeks, is that fair?

24 A. I wasn't getting paid, but I was there for sure. Felt like
25 work.

MC6VPLA4

Gerszberg - Redirect

1 Q. For a couple of weeks though?

2 A. Sure.

3 Q. See where it says oil and gas, 367.5 million?

4 A. Yes.

5 Q. You were assuming that number was true, weren't you?

6 A. It was provided to me.

7 Q. By who?

8 A. I don't know. It could have been Naftali or David
9 Steinberg.

10 Q. Sorry. Anyone else?

11 A. No, just David Steinberg or Naftali probably, I would
12 imagine.

13 Q. You see in the notes column where it says GGO?

14 A. Yup.

15 Q. Familiar with a company called Golden Gate Oil?

16 A. I'm familiar with the name Golden Gate Oil, the company
17 name. I didn't have a lot of understanding of the specifics
18 about the companies.

19 Q. Familiar with -- do you see where it says Nstar?

20 A. Northstar.

21 Q. There you go.

22 Do you know how much of that 367.5 million that you
23 were assuming existed was Golden Gate and Northstar?

24 A. I can't tell you.

25 Q. Were you aware that by this point Golden Gate had become

MC6VPLA4

Gerszberg - Redirect

1 defunct?

2 MR. LAUER: Objection.

3 THE COURT: Sustained.

4 Q. Had you spoken to anyone at Platinum Management about the
5 current operational status of Northstar by this point?

6 A. I had some discussions.

7 Q. Had you spoken to anyone at Platinum Management regarding
8 the current operational status of Golden Gate Oil?

9 A. I had broad conversations with position managers about
10 values, which was assembled here. I would imagine that the
11 components that were unencumbered -- the reason things were
12 encumbered was because they had more value. But if you -- if
13 you're trying to ask if there was value in the positions --

14 Q. I'm asking you --

15 A. -- I feel very comfortable with the fact that the positions
16 were mitigated to the detriment of their full value. And I
17 only know that specifically because you probably left \$40
18 million on the table by selling my investment short. So while
19 you're smug about the fact that I said it sucked, it sucked for
20 you, too.

21 THE COURT: I think you've answered the question.

22 Q. I think the question has been answered.

23 At the time did you know the operational status of
24 Golden Gate Oil?

25 A. No. I don't know how much information I had on any

MC6VPLA4

Gerszberg - Redirect

1 specific one; probably not very much on Golden Gate Oil.

2 Q. Your thesis that there had been an overcollateralization of
3 Beechwood loans was based upon what you believed at this time
4 to be the gross value of the assets in the left-hand column?

5 A. That's entirely a fair position. I wasn't giving value to
6 these positions.

7 Q. And should there have been information that those asset
8 values were wrong, it may have altered your conclusion that
9 there had been an overcollateralization?

10 A. There were some investments that were clearly demonstrably
11 overcollateralized. I can't speak to the oil and gas
12 positions.

13 Q. I'm specifically asking about the oil and gas positions on
14 367.5 million.

15 THE COURT: Put another question, please.

16 A. I can tell you --

17 THE COURT: No, no, no. Put another question,
18 counsel.

19 THE WITNESS: I'd like to answer it. I think I can
20 answer it.

21 THE COURT: As I tried to explain to you before, we've
22 got rules.

23 THE WITNESS: Then I won't.

24 THE COURT: Thank you.

25 Put another question.

MC6VPLA4

Gerszberg - Redirect

1 Q. If information was to come to your attention that those
2 positions were worth materially less than 367 million, how
3 would that impact your overcollateralization?

4 MR. LAUER: Objection.

5 THE COURT: Sustained.

6 A. It's all --

7 THE COURT: No, no, no.

8 THE WITNESS: Okay.

9 THE COURT: I sustained the objection.

10 THE WITNESS: Thank you. Sorry.

11 Q. On this particular sheet, your clothing business which had
12 shut down is being valued at 22 million, isn't it?

13 MR. LAUER: Objection.

14 THE COURT: Ground.

15 MR. LAUER: The lawyer is testifying, your Honor.

16 THE COURT: No, no, no, I think he's just referring
17 him to the exhibit that is in front as a preliminary to a
18 question. So the objection is overruled, but now let's hear
19 the question.

20 Q. On this sheet, your clothing company over everything is
21 being valued at 22 million, isn't it?

22 MR. LAUER: Objection. Mischaracterization.

23 THE COURT: The question is, is that right?

24 A. I wasn't involved in any of the valuations. My focus here
25 was not to argue the valuations, it was to argue the encumbered

MC6VPLA4

Gerszberg - Redirect

1 positions, and that they could yield an outcome for liquidity.
2 So what Platinum valued or what the value was of my position
3 had zero to do with my preparation.

4 However, I would imagine if we could go and try to
5 piece together assets that we left on the table that were of
6 significance, but without funding, I couldn't advance. There
7 was a number of proprietary programs and positions and brands
8 that I abandoned.

9 Q. Now, you presented this presentation and thesis to
10 Mr. Bodner and Mr. Huberfeld; correct?

11 A. Okay.

12 Q. And you said it seemed like they didn't know much about
13 what you were talking about. Is that fair?

14 A. They did not.

15 Q. Did you ask them or at any time later whether they had
16 information that the oil and gas investments had been
17 materially overvalued such that your overcollateralization
18 thesis would make no sense?

19 A. No.

20 Q. Another purpose of your presentation which Mr. Lauer asked
21 you about was this concept of a management class of equity, is
22 that fair?

23 A. Yes.

24 Q. We saw in an email just now that you considered yourself a
25 good friend of Mark Nordlicht?

MC6VPLA4

Gerszberg - Redirect

1 A. Might have been broad.

2 Q. Okay.

3 A. It was a little broad but, you know, he was letting me get
4 involved in trying to work through.

5 Q. Did you ever have any conversations directly with Mark
6 Nordlicht about what he thought the remaining value of the
7 management company was?

8 A. He thought it was going to bring in --

9 Q. I'm sorry, my hearing is --

10 A. No, your hearing is fine. I'm not talking into the mic.

11 Q. Okay.

12 A. He thought -- his belief was that it was going to bring in
13 value. He thought he was going to get people to invest in the
14 fund for the management equity.

15 Q. He thought that just -- this presentation assumes that just
16 a slice of the management equity is going to be worth 10, 20,
17 \$30 million, right?

18 A. No, it assumes that if you invest 10, 20, or \$30 million,
19 you get a slice of the management equity. It wasn't buying the
20 management equity.

21 Q. Fair.

22 You thought that this presentation assumes that if you
23 invested 10 or 20 or \$30 million, that person would be getting
24 a slice of management equity?

25 A. Actually this presentation presumes that the right answer

MC6VPLA4

Gerszberg - Redirect

1 for this entire thing to preserve value is to -- is to turn
2 this fund into a private equity fund. Because if you did, you
3 have the right to give pieces of each of the companies that
4 exist or the right to hold all of the redemptions which would
5 give you the opportunity to work through funding different
6 positions.

7 Q. Did you have any direct conversations with Mark Nordlicht
8 regarding his specific understanding of the value of those oil
9 and gas assets?

10 A. No.

11 Q. Okay.

12 MR. GLUCK: Mr. Parson, will you please call up
13 Plaintiffs' Exhibit 367.

14 We'll seek to move this into evidence.

15 MR. LAUER: I object. It's a 403 issue.

16 THE COURT: I understand that. And I actually think
17 there's other objections as well, but one is sufficient.

18 Sustained.

19 Q. Did Mr. Nordlicht ever tell you that it was his personal
20 view that there was no value to the management company?

21 A. Mr. Nordlicht would position arguments on both sides of any
22 equation to be able to make an effective case at that moment,
23 and you could argue things both ways.

24 I think that Mr. Nordlicht continued to believe that
25 the value -- that there was enough value to get an investor to

MC6VPLA4

Gerszberg - Redirect

1 bring in 100 or \$150 million at various different times. And
2 that's probably why he wanted to preserve the structure and I
3 felt it would be better to focus on a conversion. But I can't
4 speak to this document. I don't know what --

5 Q. The document is not --

6 (Indiscernible crosstalk)

7 MR. LAUER: Can we ask that it be taken down?

8 Thank you.

9 THE COURT: Yes, I agree.

10 Q. If the NAV --

11 A. But to clarify, he thought the sky was falling one day and
12 he thought the opportunities were abound the next. I can't --

13 Q. If the NAV of PPVA was zero or close to zero, there would
14 be no value to the management company; is that correct?

15 MR. LAUER: Objection.

16 THE COURT: I'll allow it. You may answer.

17 Do you want to repeat the question?

18 THE WITNESS: No, I want to answer.

19 THE COURT: All right.

20 A. It's a funny thing to ask a question like that. Because
21 the entire portfolio ultimately, as opposed to fallacy, which
22 is you're stuck with your outcome that you produced because of
23 the way you approached managing the outcome. So positions like
24 mine that were mitigated by not having focus or investment or a
25 good transition don't get addressed.

MC6VPLA4

Gerszberg - Redirect

1 So you're saying that the company was worth nothing
2 because you liquidated for nothing; but that doesn't mean it
3 was worth nothing. You're just proving what your outcome was
4 was right. I don't want to speak to --

5 MR. GLUCK: Move to strike as nonresponsive.

6 THE COURT: Yes, that's granted.

7 Did you have any knowledge of what, if anything,
8 Mr. Nordlicht said to investors?

9 THE WITNESS: No, I wasn't involved in investor
10 relations outside of trying to get people to hold off on
11 redemptions and convert them.

12 THE COURT: So you don't know whether he said to them,
13 This is a great company or the sky is falling?

14 THE WITNESS: I was not involved at all in the
15 management share class sale, that idea. That was his idea.

16 THE COURT: The answer is you don't know.

17 THE WITNESS: Not at all.

18 THE COURT: Very good.

19 MR. GLUCK: On that, unfortunately, I am going to have
20 to impeach in a second.

21 Now, can you please call up PX 364, Mr. Parson.

22 THE COURT: I didn't hear. It hasn't been offered.

23 MR. GLUCK: It's being offered.

24 THE COURT: Any objection?

25 MR. LAUER: Yes, your Honor.

MC6VPLA4

Gerszberg - Redirect

1 THE COURT: Sustained.

2 MR. LAUER: Thank you.

3 BY MR. GLUCK:

4 Q. You were asked some questions regarding the stock traders
5 at Platinum by Mr. Lauer, do you recall that?

6 A. You asked me?

7 Q. Stock traders with short positions as opposed to like the
8 long-term one, do you recall that?

9 A. Yes.

10 Q. Do you have personal knowledge as to whether the liquid
11 stock positions of PPVA were stuck in a third-party collateral
12 account that PPVA couldn't access?

13 A. I don't recall.

14 Q. No?

15 A. I don't recall.

16 Q. Don't recall.

17 Another position you took with respect to this
18 presentation was the concept that the one way to solve this was
19 that -- would be by sort of converting this to a private equity
20 structure so that no more redemptions could occur?

21 A. Correct.

22 Q. At the time, we went over the backlog of redemptions that
23 were then pending, right?

24 A. Right.

25 Q. People couldn't get their money out at that time?

MC6VPLA4

Gerszberg - Redirect

1 A. Right. So what's the question?

2 Q. My question is if someone had agreed to not redeem their
3 interests, it wouldn't be worth it very much because nobody
4 could redeem their interests?

5 MR. LAUER: Objection.

6 THE COURT: Hold on.

7 A. I don't think you asked a question --

8 THE COURT: No, wait. When there is an objection, you
9 have to wait for me to rule.

10 THE WITNESS: Sorry.

11 THE COURT: I think all these kinds of questions are
12 not proper for this witness. This is a percipient witness;
13 he's being asked to testify to what he saw, heard, observed, or
14 himself said, prepared, or the like. He's not here to give his
15 opinion about if X were true, would Y follow.

16 So sustained.

17 MR. GLUCK: That's fair.

18 May I build some foundation? Because the settlement
19 agreements -- litigations brought up by Mr. Lauer directly
20 impact what Mr. Gerszberg saw, heard, and did.

21 THE COURT: All right.

22 You can lay a foundation. That's fine.

23 BY MR. GLUCK:

24 Q. Mr. Gerszberg, you were not personally --

25 THE WITNESS: Judge, he's referencing the settlement.

MC6VPLA4

Gerszberg - Redirect

1 I don't have an attorney here and I don't know what he's
2 referencing within the settlement.

3 THE COURT: You may recall that it's already in
4 evidence by consent of both sides here, so you can answer
5 anything about it. If it touches on attorney-client privilege,
6 I'll interrupt and protect you.

7 THE WITNESS: Thank you.

8 BY MR. GLUCK:

9 Q. Mr. Gerszberg, you were not personally or through an entity
10 you control in a litigation with PPVA over the security granted
11 in Implant Sciences, were you?

12 A. Repeat the question.

13 Q. Contrary to your answer to Mr. Lauer, you were not
14 personally or through a company you controlled --

15 A. You're incorrect.

16 Q. Do you control West Loop?

17 A. No, but I personally guaranteed to repay many monies lost.
18 So you asked me if I'm personally responsible, I was personally
19 responsible.

20 Q. I asked you whether you --

21 THE COURT: All right.

22 MR. GLUCK: It's a very important distinction here.

23 Q. Were you or was any company in your control in a litigation
24 with the JOLs in --

25 A. No.

MC6VPLA4

Gerszberg - Redirect

1 Q. -- respect of the Implant Sciences --

2 THE COURT: So I think his answer, correct me if it's
3 wrong, is he was indirectly involved through a guarantee. Do I
4 have that right?

5 THE WITNESS: Yes.

6 THE COURT: I think he's answered the question.

7 Q. Did you arrange via Mark Nordlicht to grant West Loop,
8 which is owned by your family, a subsidiary level encumbrance
9 over the Implant Sciences investment?

10 A. It was part of a larger negotiation with consideration.

11 Q. Okay. Did you?

12 A. As part of a larger settlement, yes. As part of a larger
13 business transaction, yes.

14 Q. And the liquidators sued West Loop, that company, to
15 invalidate that security agreement in New York state court; is
16 that right?

17 A. That is right.

18 Q. Okay. Now, you arranged for this after Mr. Murray
19 Huberfeld had been arrested and the fund had actually imploded,
20 is that right?

21 MR. LAUER: Do we need this?

22 A. Time out.

23 MR. GLUCK: We do. Because --

24 THE COURT: Excuse me. Excuse me.

25 Although Mr. Lauer couched his objection a little

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Gerszberg - Redirect

1 unusually, I think he was raising an objection.

2 That objection is sustained.

3 MR. LAUER: Thank you.

4 Q. Had you formed a view by the summer of 2016 that PPVA would
5 not be able to pay back not merely its investors, but its
6 unsecured creditors and secured creditors too, such that a
7 subsidiary-level encumbrance would benefit your family?

8 MR. LAUER: Relevance. It's long outside the period.

9 MR. GLUCK: It goes directly to --

10 THE COURT: No, no, I think --

11 THE WITNESS: It would actually benefit --

12 THE COURT: Whoa, whoa.

13 I think it goes to bias. It is permitted.

14 You may now answer. Go ahead.

15 A. It went to support a transaction that was worth about \$40
16 million to Platinum that you ultimately mitigated. I mean, you
17 walked away from -- at some point in the near future -- here's
18 the same, Sapatta. Look it up. And when you see the value of
19 the company at well over a couple \$100 million, remember that
20 you're the one that mitigated it for \$2 million.

21 And now you're asking me whether or not the
22 transaction was good that you personally mitigated, that you
23 went and sacrificed opportunity. So I don't understand. You
24 can laugh all you want. When I said it sucked, it didn't just
25 suck for me, it sucked for all the people that were going to

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Gerszberg - Redirect

1 benefit from the liquidation of the Platinum positions.

2 You mitigated value without asking or understanding.
3 You went and dropped tons of opportunities that I could -- I'd
4 be happy to point out. Because you said we have to quickly get
5 rid of things or who knows, but you're suing for six years, but
6 positions -- you could laugh all you want, but positions that
7 were fully secured you traded out for cents on the dollar so
8 you could pay back a legal defense fund. It's ridiculous.

9 You're creating your own version of the outcomes by
10 mitigating them, making sure they suck, and then asking me.
11 But you would have never said anything to me if it was worth
12 \$40 million; you would have just shut up. But so you forced
13 the outcome, and then you're asking me about value.

14 THE COURT: Excuse me. Excuse me.

15 Q. The question is --

16 THE COURT: Excuse me.

17 A. Smile --

18 THE COURT: Hey.

19 THE WITNESS: Sorry.

20 THE COURT: My question to counsel is whether you want
21 that last answer stricken as nonresponsive or whether you
22 prefer to leave it.

23 MR. GLUCK: I would prefer the answer be stricken and
24 to --

25 A. Figured.

MC6VPLA4

Gerszberg - Redirect

1 MR. GLUCK: -- repose the question on the very
2 specific basis of a simple query.

3 Q. Ignore your jetpack.

4 A. Ignore the reality. Play your game.

5 Q. Let me ask my question.

6 Ignore your jetpack --

7 THE COURT: You know, excuse me. Excuse me.

8 In approximately 30 seconds I will have to consider
9 the very difficult question that I haven't had to reach in my
10 26 years on the bench, which is whether to hold counsel and the
11 witness in contempt, and have the marshals come here and take
12 them to jail, or whether it's time for both of you to grow up
13 and behave and play according to the rules.

14 Would you care to play before the rules?

15 MR. GLUCK: I would love to.

16 THE COURT: Would you care to play before the rules?

17 THE WITNESS: I don't know the rules.

18 THE COURT: You don't know the rules? Well, the
19 rules --

20 THE WITNESS: Trying to understand.

21 THE COURT: The rules are that you only answer the
22 questions put and that you don't give emotional, long-winded
23 answers that aren't called for by the questions.

24 THE WITNESS: Judge, I lost \$40 million.

25 THE COURT: Yes, I understand that. You've already

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Gerszberg - Redirect

1 told that to me and the jury 14 times.

2 THE WITNESS: Right.

3 More money that was ever lost because of -- Platinum
4 Management was lost because of this gentleman.

5 THE COURT: Okay. So my question to you is do you
6 want to continue, continue saying that, which you've already
7 said many times to the jury, do you want to continue saying it,
8 which is in violation of the rules of evidence, because it
9 wasn't the question asked, or would you prefer me to call the
10 marshals and take you off to jail tonight, which will be a
11 comfortable place to spend the evening?

12 May I humbly suggest to you that you've already made
13 your point to the jury many times.

14 THE WITNESS: Thank you.

15 THE COURT: Why don't we just continue according to
16 the rules, okay?

17 THE WITNESS: Sure.

18 THE COURT: Very good.

19 MR. GLUCK: I'm going to try to ask a very simple set
20 of yes-or-no questions.

21 BY MR. GLUCK:

22 Q. I'm going to try to ask a very simple set of yes-or-no
23 questions. Was West Loop, a company owned by your cousins, a
24 secured creditor of PPVA?

25 THE COURT: We're having trouble hearing. Put the

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Gerszberg - Redirect

1 question again.

2 Q. Was West Loop, the company owned by your cousins, a secured
3 creditor of PPVA?

4 A. That was secured by PPNE.

5 Q. Was there a security agreement with PPNE?

6 A. I don't know.

7 Q. Did you determine --

8 A. I don't recall.

9 Q. Did you determine to have a document executed which would
10 give West Loop a right to recoveries even above PPNE-secured
11 creditors?

12 A. Can you repeat the question?

13 Q. Did you ask Mark Nordlicht to execute a document that would
14 give West Loop a right of recovery even above the secured
15 creditors of PPVA at what's called a subsidiary?

16 A. As part of a larger agreement.

17 Q. Fine. Did that subsidiary --

18 A. The consideration was for the agreement, not because --

19 THE COURT: No, you've answered the question.

20 Q. I'll try to do yes or no's.

21 Did that subsidiary of PPVA, operated by Mr. Trott,
22 sue in New York State Supreme Court to try and invalidate that
23 agreement?

24 A. And yet it was paid, because it was right to pay it.

25 Because you --

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Gerszberg - Redirect

1 Q. Did -- I'll try to ask it as a yes or no.

2 Did Mr. Trott sue in New York State Supreme Court from
3 DMRJ to invalidate that agreement?

4 A. I don't recall the specifics of the process of the lawsuit.

5 Q. Do you recall being deposed in that lawsuit?

6 A. Oh, yeah.

7 MR. LAUER: I don't know, it just seems to me we're
8 getting a little far afield.

9 THE COURT: Wait a minute. Wait a minute.

10 You think we're getting a little far afield?

11 I'm going to confine plaintiffs' counsel to five more
12 minutes.

13 BY MR. GLUCK:

14 Q. Why would it be helpful for West Loop to have a
15 subsidiary-level lien on PPVA's assets?

16 A. I'm sorry. Can you explain the question better so I can
17 understand. Because you don't want to ask a real question,
18 you're trying to ask an out-of-context question.

19 THE WITNESS: I don't understand what he's saying.
20 Doesn't even make sense the way he's asking it.

21 Sorry, Judge, I'm trying. But he won't ask a robust
22 question because he knows it won't serve him; so he asks a
23 marginalized question and I can't figure out what he's saying.

24 MR. GLUCK: I move to strike.

25 THE COURT: It will be stricken.

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Gerszberg - Redirect

1 Last I understood, this has only been the law for the
2 last 500 years in both England and the United States, and
3 what's 500 years between friends? But the role of one counsel
4 is to put questions, and the role of the other counsel is to
5 object if the question is improper, and then the role of the
6 judge is to make that determination. But never in the last 500
7 years has it ever been held that the role of the witness is to
8 determine what is a proper question.

9 THE WITNESS: Fair. Sorry.

10 THE COURT: Put another question.

11 BY MR. GLUCK:

12 Q. The question is whether you had formed a view as to whether
13 PPVA would be unable to pay back its creditors?

14 MR. LAUER: Objection. Relevance.

15 Q. Valuation.

16 MR. LAUER: Objection.

17 THE COURT: Well, I don't think it's irrelevant, but I
18 think it has effectively been asked and answered by prior
19 questions. So on that silently conveyed ground of asked and
20 answered, the objection is sustained.

21 MR. LAUER: Thank you.

22 Q. Due to the work of Mr. Trott, West Loop was repaid in full
23 outside of that agreement, is that true?

24 MR. LAUER: Objection.

25 A. It was supposed to be paid in full.

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Gerszberg - Redirect

1 MR. LAUER: Objection.

2 THE COURT: Well, I will allow that. Well, actually,
3 I won't allow that because it's a compound question. But you
4 may rephrase it if you wish.

5 Q. West Loop became a secured creditor in the PPVA estates,
6 didn't they?

7 A. You asked me whether or not I owned West Loop; now you're
8 asking me --

9 THE COURT: He's asking do you know whether or not --

10 Q. Do you know?

11 A. I didn't read the charges against West Loop.

12 THE COURT: So the answer is you don't know.

13 Q. And do you know one way or another whether West Loop as a
14 creditor in the PPVA estates, not through this other agreement,
15 but as a creditor in the PPVA estates, has been repaid?

16 MR. LAUER: Objection. Relevance.

17 MR. GLUCK: Your cross-examination testimony regarding
18 these lawsuits and settlements.

19 THE COURT: Well, I think given his answer to the
20 previous question, it doesn't sound like it's within the scope
21 of his knowledge. Sustained.

22 I'm sorry, you didn't hear me.

23 MR. GLUCK: No, I have a hearing issue.

24 THE COURT: I'm sorry.

25 THE WITNESS: Within the scope of my knowledge --

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1 THE COURT: Whoa. You really are pressing your luck.

2 I sustained the objection on the grounds that it's
3 outside the scope of his knowledge.

4 Q. Final question: Are you aware that PPVA entered into
5 liquidation, not officially, but liquidation shortly after the
6 arrest of Murray Huberfeld?

7 MR. LAUER: I'm objecting.

8 THE COURT: Sustained.

9 All right. That concludes the examination.

10 You are excused. Thank you very much.

11 THE WITNESS: Thank you.

12 (Witness excused)

13 THE COURT: Well, I know you hated to have that
14 examination come to an end; nevertheless, we're only going to 4
15 o'clock today. We'll take our 15-minute mid-afternoon break
16 now, and then we'll reconvene at 2:30 and go straight till 4.

17 See you then.

18 (Jury not present)

19 THE COURT: All right. Please be seated.

20 I'm tempted to ask plaintiffs' counsel whether he
21 called Mr. Gerszberg because of the close and friendly
22 relations that they enjoy; but, in any event, I think the jury
23 has a sense of the situation. Okay.

24 I know that someone said to my courtroom deputy, but I
25 don't think I've seen yet, there was a submission, someone said

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1 this morning, about the release, something additional to what
2 I've seen before. And it was a two-page letter or something
3 like that.

4 MR. GLUCK: I don't know about the pages --

5 THE COURT: Do you happen to have a hard copy?

6 MR. GLUCK: I'm sure I could show it to you on the
7 laptop.

8 THE COURT: I'll tell you what, why don't you send
9 it -- well, as soon as we break, send it to my law clerk and
10 I'll read it over the break and we can discuss that further.

11 Anything else we need to take up now?

12 MS. MOSSE: Your Honor, we sent a response as well.

13 THE COURT: Okay. So send that as well.

14 I was wondering whether I would have trouble sleeping
15 tonight, but now I have both of your responses, there will be
16 no problem.

17 All right. See you in a few minutes.

18 (Recess)

19 (Continued on next page)

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1 (Jury not present)

2 THE COURT: What's the issue?

3 MR. GLUCK: Issue one may be simple. With respect to
4 Mr. Huberfeld, we believe that the entire argument is that the
5 giving up of the Platinum Management interest form the
6 consideration for the release, there were two exhibits in the
7 previous unusual examination that did not come into evidence,
8 but that are directly on the value of those shares being given
9 up. Our inquiry was whether they were not brought in for
10 knowledge, it wasn't clear from the record for personal
11 knowledge or for some other reason.

12 THE COURT: Well, what is your application?

13 MR. GLUCK: We believe we need to show Mr. Huberfeld
14 the exhibit and ask whether he had conversations with
15 Mr. Nordlicht just to value the --

16 THE COURT: This is for the next witness?

17 MR. GLUCK: This is the lessor, so this is direct.

18 THE COURT: Does someone have a hard copy?

19 MR. GLUCK: These are exhibits 364 and 367.

20 MS. SHEN: They were passed up for identification for
21 Mr. Gerszberg's examination.

22 THE COURT: So these are two exhibits for
23 Mr. Nordlicht, but they did not copy the previous witness,
24 which is why, among other reasons, they were not received
25 through the previous witness. The witness you're about to call

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1 is Mr. Huberfeld.

2 MR. GLUCK: Huberfeld, who is a lessee.

3 THE COURT: He is not copied on this, is he?

4 MR. GLUCK: He's not, but our issue in this case is
5 whether there was consideration to PPVA for this release. The
6 suggestion is that the relinquishment of the shares was
7 valuable.

8 THE COURT: My question is not about relevance, my
9 question is how can you ask a witness to say anything about an
10 email that was neither sent by him nor received by him?

11 MR. GLUCK: I think my answer is we are -- there is
12 some uncertainty whether Mr. Nordlicht can be called. This is
13 a fundamental issue in the case, and my question would be
14 whether there was a conversation between Mr. Nordlicht and
15 counsel for Mr. Huberfeld or Bodner, or Huberfeld and Bodner
16 himself regarding this subject matter, whether there was value
17 in the management company. Otherwise, this was the point about
18 why, among other reasons, Mr. Nordlicht --

19 THE COURT: I now have, I think, both sides, I now
20 have all your emails and I will look at them tonight, alertly.
21 And I was going to mention later but will mention now, I think
22 we'll get together at 9:00 a.m. tomorrow just to get a final
23 decision on the Nordlicht calling and the questions related to
24 the release.

25 So I will consider these with respect to that

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1 question, but with respect to the witness who's coming up, I
2 just don't see how he has any personal knowledge of either of
3 these.

4 MR. GLUCK: I think that's fair --

5 THE COURT: You can put to him questions about did you
6 discuss with X, Y, or Z such and such, but that would not
7 enable the admission of the exhibits.

8 MR. GLUCK: That's understood. I think this should be
9 considered one of our attempts to limit Mr. Nordlicht's
10 testimony.

11 THE COURT: I will certainly consider that tonight.

12 MR. HERTZBERG: Your Honor, if I may be heard briefly
13 on that issue. Mr. Gluck say that this arises in the context
14 of whether consideration was given to PPVA in exchange for the
15 release, consideration is not an issue. Under New York State
16 GOL, there is no consideration needed for a written release.
17 That issue has never been the case.

18 MR. GLUCK: I have a number of treatise articles which
19 state that an examining of the validity of the release, the
20 form of conversation, the type of consideration, and what is
21 being released is exactly and expressly at issue. I can
22 probably forward or Ms. Shen has the set of treatise articles.

23 THE COURT: That will give me something else to think
24 about tonight or really for my law clerk to think about, and
25 you should give him at the end of the day the citations on that

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1 issue. Of course New York law may be controlling. It seems
2 really odd you can have a contract without consideration. I
3 thought they decided that in 1492. But anyway, I hear what
4 you're saying.

5 MR. HERTZBERG: The value of the shares wouldn't be
6 the only consideration anyway. It was a mutual release. There
7 was a release in both directions. There was also an agreement
8 by Mr. Bodner and Mr. Huberfeld to lock up their interests in
9 the funds for two years. That's consideration, too.

10 THE COURT: I must say, and we really need to get to
11 the next witness, but of course counsel for both sides are
12 totally in control what they want to argue and what they want
13 to put before the jury in terms of the issues in this case,
14 subject to the rulings previously made on summary judgment.

15 But, if I were a juror in this case, I would have
16 thought that on one hand, there is not a serious question that
17 there was a material overstatement, and that, therefore, the
18 real issue on that is whether Mr. Bodner knew of it, and if so,
19 whether he had any obligation to do anything about it.

20 On the other hand, I would think a reasonable juror
21 would not spend much time on things like the authenticity of
22 the release that has been referred to numerous times already,
23 but rather the issue of whether the release is valid and
24 binding under more general principles of law that both sides
25 are able to argue to the jury after we set forth the relevant

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1 provisions in my instructions.

2 So I'm not making any rulings about anything. You're
3 free to argue whatever you are. What I'm suggesting is that if
4 defendants are still contesting that there was, in fact, a
5 material overstatement, my suspicion is they've got a very hard
6 road to a hoe, and if plaintiff is still arguing mostly to me
7 that there's some reason why this release should not be
8 evaluated as a release because the signature was questionable
9 or something like that, I think they got a very hard road to
10 hoe. So I just throw that out there for what it's worth.

11 Let's get the witness on the stand.

12 MR. GLUCK: There was a second issue. The second
13 issue does go to the very heart of the release. So our
14 contention is that the release is not valid, not because of the
15 signature, because of its content.

16 THE COURT: That, of course, is the real issue, yes.

17 MR. GLUCK: And our contentions are that there was no
18 value to the management company, there was no value with the
19 share lock upend, as Ms. Shen has a document, that one of the
20 items released specifically concerned Mr. Huberfeld and the
21 issues surrounding -- there is a memorandum that was prepared
22 prior to the release being signed, and it is a memorandum that
23 was prepared within the Curtis firm and then transmitted to
24 PPVA's lawyers, Dechert --

25 THE COURT: Does someone have a hard copy of that?

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1 MR. GLUCK: Yes. And it has the cover email. It's
2 just sort of how it was transmitted and then the content.

3 THE COURT: Let me take a quick look. So this appears
4 to be a memo from Mr. Hertzberg to Mr. Lauer, dated March 10th,
5 2016, that looks like should normally be covered by
6 attorney-client privilege. Moreover, it appears that it was in
7 the context of discussions with an assistant U.S. attorney and
8 providing him with information, and that would have been part
9 of a settlement discussion, albeit the criminal segment.

10 Then there is another memo from Mr. Levander -- by the
11 way, on the cover memo, it says privileged and so forth, but
12 the cover memo is from Mr. Levander at Dechert to Ms. Halk at
13 Dechert, and then there is a, earlier, I'm reading it in
14 reverse order. So that last one was dated June 13th, but
15 before that, there was a letter, an email from Mr. Brown at
16 Dechert to Mr. Eriksberg at Curtis forwarding the internal
17 memo. Then there is a further -- then it goes from Mr. Brown
18 to Mr. Levander, et cetera. So that, seemingly, is part of the
19 joint defense or something like that.

20 So let me ask defense counsel. Are the documents that
21 have just been shown, is your assertion they are covered by
22 privilege or not?

23 MR. HERTZBERG: Your Honor, if I could provide some
24 context, if I may?

25 THE COURT: Yes, and you can even tell me I'm asking a

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1 bad question because you've now got some precedent, but perhaps
2 you would like to answer my question yes or no, and then you
3 can give your explanation.

4 MR. HERTZBERG: Mr. Bodner is not and has no capacity
5 to assert privilege with respect to this document.

6 THE COURT: Now what is it you wanted to say?

7 MR. HERTZBERG: I wanted to provide the Court some
8 context what's happening in these emails of five, six years
9 ago, because it may not jump off the page.

10 The memo that you saw was a memo from myself to
11 Mr. Lauer --

12 THE COURT: He delegates all the important matters.

13 MR. HERTZBERG: Types with two fingers, Judge.

14 We were, at that time -- the memo was March of 2016,
15 we were representing Platinum Management who had received a
16 subpoena in 2015 for matters relating to our witness,
17 Mr. Huberfeld, who's in the hallway, what was being
18 investigated in the context of what ended up being the
19 commercial bribe charge, to which there was ultimately a guilty
20 plea to honest services fraud.

21 Mr. Lauer and I at that time were representing both
22 Platinum Management and Mr. Huberfeld, who had both received
23 subpoenas in that case. It had gone on for, I don't know, six
24 months or so. And the memo that you saw was when the AUSA who
25 we had been interfacing with, Russ Capone, had called us and

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1 asked us to describe some transactions between Platinum and
2 Beechwood. We went to Platinum Management, we dealt with the
3 in-house lawyer, we got the information. We told AUSA Capone
4 what we had learned, and that was the end of it.

5 Then on June 8th, without notice to us, Mr. Huberfeld
6 was arrested at home that morning and charged with the bribe to
7 Mr. Seabrook.

8 On June 9th, Mark Nordlicht hired -- June 8th or June
9 9th, the same day or the next day, Mark Nordlicht hired Andy
10 Levander, and Eliot and I were interfacing with Mr. Levander
11 and his partner, Jeff Brown. So we were forwarding them our
12 internal work product so that they can get up to speed.

13 MR. LAUER: Counsels of defense.

14 MR. HERTZBERG: Correct, on a joint-defense basis.
15 The joint defense, not Mr. Bodner, who is not our client and
16 had nothing do with this, but the joint defense between
17 Platinum Management -- Platinum Management's two lawyers,
18 actually. It was Platinum Management being represented by
19 Curtis and Platinum Management being represented by Dechert.
20 Fast forward to the liquidation and Dechert produced this memo
21 to them.

22 THE COURT: So any privilege was waived. Is that the
23 point?

24 MR. HERTZBERG: We entered a stipulation with the JOLs
25 that it was a joint -- that we jointly held the privilege and

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1 left it there.

2 THE COURT: So this was -- it's plaintiffs' position
3 this was shown to Mr. Huberfeld?

4 MR. HERTZBERG: No, I don't believe that's their
5 position. I don't believe we have any facts on this.

6 THE COURT: How do you plan to introduce it?

7 MR. GLUCK: Plaintiffs' position is that Mr. Huberfeld
8 was aware of this work being done by Curtis, in particular in
9 relation to him, that Mr. Huberfeld and Mr. Bodner hired Curtis
10 to negotiate this release, and that this particular liability
11 was the subject of the release, and that is an impermissible
12 one. That's it.

13 MR. LAUER: Your Honor, I know Mr. Grossberg --
14 Mr. Hertzberg has addressed this, but I don't want my silence
15 to imply that I have some --

16 THE COURT: You just got yourself in deep trouble by
17 mispronouncing his name, but --

18 MR. LAUER: It's sleep deprivation or otherwise known
19 as trial. My best recollection is this was not communicated
20 with Mr. Huberfeld or Mr. Bodner. We were basically dealing
21 with Harvey Wroblowski and Platinum Management, and this really
22 had nothing to do with -- had absolutely nothing to do with
23 Mr. Bodner.

24 THE COURT: Let me go back to plaintiffs' counsel just
25 so I understand what you think.

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1 Your claim that the release is invalid with respect to
2 the issues that you are now discussing is exactly what?

3 MR. GLUCK: Our claim that the release is invalid is
4 that it -- threefold, each of which is important. First, it
5 violated public policy on the ground that joint --

6 THE COURT: I think that's an issue for the Court, as
7 I indicated previously.

8 MR. GLUCK: It may be, but this is our argument.
9 Somebody's got to listen to this evidence.

10 THE COURT: No, but I could take evidence outside the
11 hearing of the jury.

12 MR. GLUCK: Firstly, it violated public policy on the
13 ground that it was an impermissible release between joint tort
14 feasors, coconspirator, Mark Nordlicht, Platinum Management,
15 David Bodner, and Murray Huberfeld. And with respect to those
16 joint torts, we have overvaluation. We have this COBA issue,
17 we have the Black Elk issue --

18 THE COURT: I'm sorry. The joint tort feasors, again,
19 are who?

20 MR. GLUCK: The joint tort feasors are Platinum
21 Management, who had an alleged ability to buy into PPVA, Mark
22 Nordlicht, Murray Huberfeld, and David Bodner.

23 THE COURT: Okay. So now let me get back to defense
24 counsel.

25 So the claim is that the release was just a phoney

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1 arranged by joint tort feasons to try to let various people off
2 the hook. That is certainly an arguable defense.
3 Mr. Huberfeld can certainly be questioned about that.

4 I think we had to take it question by question, and in
5 response, I may have to interrupt the jury while we hear some
6 testimony outside the presence of the jury.

7 I take it you're not arguing they can't adduce
8 evidence that -- let me give it a hypothetical. If
9 Mr. Huberfeld sat down with Mr. Bodner is and said, you know,
10 we're going to let you off the hook, you know too much, but
11 we'll cover for you, here's a release. That would clearly be
12 admissible, yes, because you're relying on the release. That
13 would be a response to the release. So why isn't this a more
14 circumstantial variation on that theme, in effect?

15 MR. LAUER: I'm not sure of the question, your Honor.
16 I thought that the reason we're talking about this is Mark
17 Nordlicht. If we're addressing the merits of the release, just
18 to build on what Mr. Hertzberg said, the merits of the release,
19 absent the so-called public policy issue that largely -- that
20 enabled them to survive summary judgment because of Marcos
21 Katz's facts that caught the Court's attention and is
22 referenced in the summary judgment, but if we're arguing the
23 merits of the release, there will be overwhelming evidence that
24 the relatively minor potential exposure, to the extent God was
25 thinking about it because God knows no one else was with

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1 respect to management fees that went into the business and
2 incentive fees that, two years before, had been stopped because
3 they are ethical people, that this was overwhelmingly, as you
4 heard from one witness after the other, was designed to free
5 this up so Mark, who felt he was stuck with Murray and David
6 clipping coupons without putting in effort, money, or doing
7 anything, now was going to guilt them into, guys, this is thing
8 is going to collapse if you don't let me take your shares.

9 So we're more than comfortable arguing this to the
10 jury. We believe when all the evidence is in that the Court
11 will be asked --

12 THE COURT: I may decide as a matter of law, I
13 understand that, but I don't think --

14 MR. LAUER: So I don't know what the question is.

15 THE COURT: So you were listening to the last witness
16 because you're giving the same response.

17 Actually, I'm going to withdraw the question because I
18 think I've heard enough now to rule as to particular questions
19 that are put. So I see the issues now, we'll take it one
20 question at a time. So we need to get this witness on the
21 stand, so let's get the witness on the stand and the jury. I
22 want to mention to plaintiffs' counsel, and I do not in any way
23 suggest you haven't been moving with reasonable speed, but I do
24 think the jury is anxious to move this case along. So I'm
25 hopeful we can conclude the plaintiffs' case tomorrow if at all

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1 possible.

2 MR. GLUCK: Subject to any inordinate issues.

3 THE COURT: Has anyone heard anything with

4 Ms. Albanese?

5 MS. SHEN: We emailed her and I don't believe we've
6 heard back, but I'll check with my colleague.

7 (Continued on next page)

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Huberfeld - Direct

1 (Jury present)

2 THE COURT: The witness should come up here.

3 THE DEPUTY CLERK: Please take the witness stand.

4 MURRAY HUBERFELD,

5 called as a witness by the Plaintiffs,

6 having been duly sworn, testified as follows:

7 THE DEPUTY CLERK: Please be seated. State your name
8 and spell it slowly for the record.

9 THE WITNESS: Murray Huberfeld, M-u-r-r-a-y,
10 Huberfeld, H-u-b-e-r-f-e-l-d.

11 DIRECT EXAMINATION

12 BY MR. GLUCK:

13 Q. Good afternoon, Mr. Huberfeld. I would like to ask you a
14 few questions today regarding the following topics to put your
15 mind in the right place: Your relationship with Mr. Bodner,
16 your relationship with Platinum, and the circumstances by which
17 a release was executed by Platinum Management in favor of
18 yourself and Mr. Bodner.

19 MR. HERTZBERG: Objection. Move to strike.

20 THE COURT: No. Go ahead, place your question.

21 Q. First, could you please tell us when did you begin working
22 with Mr. Bodner?

23 A. I believe in 1985.

24 Q. And in what capacity was that?

25 A. At the time, I was in the restaurant business, I met

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Huberfeld - Direct

1 Mr. Bodner and another associate of his. They, at the time, I
2 believe, owned a brokerage firm and I joined them as a partner.

3 Q. Did you, yourself, become a financial services person?

4 A. Could you expand on that.

5 Q. What did you do with the brokerage firm?

6 A. So I worked on the trading desk together with Mr. Bodner
7 and together with the other partner, leading the companies that
8 possibly we were going to invest in.

9 Q. What was Mr. Bodner's role at this trading company?

10 A. He was mostly on the trading desk.

11 Q. And how long did that continue?

12 A. That continued till the crash of 1987, October of '87.

13 Q. And then what happened?

14 A. Then the two of them decided not to continue working
15 together and I had to choose one or the other, and I decided to
16 stay and become partner with David Bodner. At the time, we
17 didn't have any business, but we started to work together as
18 partners.

19 Q. Did you have a formal partnership agreement?

20 A. No.

21 Q. Did you have an informal partnership agreement?

22 A. Can you expand on that.

23 Q. Have you heard the term "unincorporated partnership" before
24 today?

25 A. I think you asked me that in a deposition. That was the

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Huberfeld - Direct

1 first time I had heard that. We were partners, we had been
2 doing things together, 50/50, investing in things together and
3 working together.

4 Q. Let me try to break that down.

5 What was the business of your partnership?

6 A. So that business lasted a very long time. So it changed
7 from year to year or every few years, but it was a -- we traded
8 together. We bought -- we traded stocks for ourselves through
9 our accounts for a while, we traded options for a while, we
10 invested in companies. We did various different things within
11 the financial world for ourselves.

12 Q. Until how long did that partnership continue or does it
13 still continue?

14 A. No, I believe the partnership ended approximately at the
15 time that Platinum had its issues in 2016.

16 Q. During the period from when your partnership formed until
17 2016, would you do all or almost all of your business together
18 with Mr. Bodner?

19 A. I think besides the restaurant business, which I had with
20 my family, yes.

21 Q. Could you please elaborate on the 50/50 role. So was
22 responsibility divided 50/50?

23 A. I don't think that there had been a discussion about
24 responsibility in the business. Everyone's doing what they
25 can. So it's not about I'm going to work six hours, he's going

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Huberfeld - Direct

1 to work four hours. It was better business, if something had
2 to be done, whoever was doing it was doing their utmost. So I
3 don't know if it was a 50/50 partnership on minutes. It was a
4 50/50 partnership that we're both doing both our efforts to
5 help our business.

6 Q. Understood. Now, if there was profits from the partnership
7 business, how would those be distributed?

8 A. A partnership was a 50/50 partnership with profits.

9 Q. So you would share the partnership -- the profits on a
10 roughly 50/50 basis?

11 A. I don't think roughly. I think 50/50.

12 Q. If there were losses, how would those be shared?

13 A. The same.

14 Q. If there was a requirement, not profits or losses, but a
15 requirement to invest capital in a particular project, who
16 would have responsibility and how would it be shared?

17 A. I can't say 100 percent on everything, but it could have
18 happened that one of us would have more liquidity for
19 something, a partner of many, many years. So I'm trying to be
20 accurate, but we both put in the same as necessary, but it
21 could have been in some circumstance one of us would have laid
22 out money for the other. That could have happened.

23 Q. There would be some sort of netting later, perhaps?

24 A. Yeah, somebody laid out money for the other and later on
25 money was -- it came in, that money would get squared up.

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Huberfeld - Direct

1 Q. Was Platinum one of the businesses of your partnership?

2 A. It was the business that myself and David helped found, I
3 believe, in 2003, and we both invested capital when Platinum
4 started.

5 Q. I understand there were two funds, PPVA and PPCO, but was
6 your interest, yours and Mr. Bodner's interest in those funds
7 also split 50/50 within your partnership?

8 A. I believe that David and I had the same interest in both
9 funds. I think at the beginning it wasn't called PPCO, it was
10 called Centurion, but our interest was basically the same.

11 Q. Same question, but for -- do you remember a company called
12 Beechwood?

13 A. Yes, I do.

14 Q. Was Beechwood one of the businesses within your
15 unincorporated partnership?

16 A. Beechwood was a business that was started that myself, my
17 family, and David's family both held an interest in. I believe
18 they were similar interests.

19 Q. If I was to ask the same questions just for the sake of
20 time about sharing profits, who took losses, would they be
21 substantially the same as your prior answers?

22 A. I think so.

23 Q. How often would you communicate with Mr. Bodner from the
24 beginning of your partnership through 2016?

25 A. I don't remember. It's -- I couldn't quantify it, but a

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1 lot.

2 Q. All the time?

3 A. All the time.

4 Q. Would you talk about your various projects?

5 A. Of course.

6 Q. Among those projects, would you talk about Platinum?

7 A. Of course.

8 Q. Among those projects, would you talk about Beechwood?

9 A. Yes.

10 Q. Would it be a regular practice for one of you to conceal a
11 portion of something you learned within one of the businesses
12 of your partnership from the other or would you mostly tell
13 each other everything, is really what I'm asking.

14 A. It's hard to answer that question.

15 Q. Let me see if I can do a better job.

16 A. Okay.

17 Q. Is your regular practice that if you get a piece of
18 information in relation to your partnership, one of your
19 businesses, let's say Platinum, would you communicate that to
20 Mr. Bodner?

21 A. If I thought it was relevant, yes.

22 Q. Same question based on your experience. If Mr. Bodner
23 received a piece of information in connection with your
24 partnership, whatever, Platinum, Beechwood, would he
25 communicate that to you?

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Huberfeld - Direct

1 A. Are you asking me what someone else would do? Would I have
2 an expectation that he would do it? Probably. If he did it, I
3 would think so.

4 Q. Can you think, off the top of your head, any particular
5 examples of something that either you didn't tell him or he
6 didn't tell you as it relates to your partnership?

7 A. It's too broad of a question. You want to ask me something
8 specific, I'm happy to answer.

9 Q. That's what I'm thinking. Are there any immediately
10 specific examples that come into your head?

11 A. No.

12 MR. GLUCK: Mr. Parson, will you please pull up
13 exhibit 72, which should be the release.

14 Q. As Mr. Magruder is getting the paper copy and we're working
15 through computer problems, do you recall an agreement by which
16 you and Mr. Bodner divested yourselves of your interests in the
17 Platinum Management hedge fund management entities and, in
18 turn, were provided with what purports to be a release?

19 MR. HERTZBERG: Objection.

20 THE COURT: It's a compound question, so break it
21 down.

22 MR. HERTZBERG: Your Honor, the objection is the
23 document on the screen appears to be a draft. If that's what
24 Mr. Gluck wants to show the witness, that's fine, but --

25 MR. GLUCK: No, it is certainly not.

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1 MR. HERTZBERG: 73 is on the screen --

2 MR. GLUCK: I understand that. 74 is the correct
3 document. 74, Mr. Parson.

4 Q. But same question, do you recall that there was an
5 agreement by which you and Mr. Bodner gave up your interests in
6 Platinum Management?

7 A. Yes.

8 Q. Do you recall that pursuant to the same agreement, yourself
9 and Mr. Bodner were granted a release by Platinum?

10 A. Yes.

11 Q. Did you have counsel in connection with this transaction?

12 A. I think so.

13 Q. Do you know who that counsel was?

14 A. I think it was Eliot Lauer and Dave Eriksberg.

15 Q. Do you know whether PPVA or Platinum Management had counsel
16 in connection with this transaction?

17 A. Do I know now? Did I know then? I'm not understanding the
18 question.

19 Q. Let's say now.

20 A. Now, I think I seen things that was some back and forth
21 with their legal counsel in house. I don't know if they had
22 outside counsel. I don't know if I knew that then.

23 Q. Did you have an understanding at the time that this release
24 was signed that it wasn't merely Platinum Management giving you
25 a release, but the actual hedge fund, PPVA?

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1 A. Same answer. Do I know that now? Did I understand that
2 then?

3 Q. Then.

4 A. I can't recall if I knew that then.

5 Q. Why would you seek a release -- excuse me. Why did you
6 want a release from Platinum Management or --

7 A. Would you repeat the question.

8 THE COURT: I'm going to ask you a different question
9 to try to move this along.

10 To your personal knowledge, how did this release come
11 about? I don't want to hear about what you were told years
12 later by someone, but from your personal knowledge.

13 THE WITNESS: So what I recall is that Mark Nordlicht
14 had communicated to myself -- again, I don't know if he
15 communicated to Mr. Bodner. I was, at the time, not in the
16 office that often. He communicated that he wanted to raise
17 additional funds for the fund. And he asked if we would be
18 willing -- or at least he asked me, I imagine it would be the
19 both of us -- to give up our interests, he could use those
20 interests to raise additional funds for the fund.

21 THE COURT: Your interest in --

22 THE WITNESS: In the management company.

23 THE COURT: In the management company. Okay.

24 THE WITNESS: So I believe that most of the
25 discussions happened with Mr. Bodner. He was more in the

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1 office at the time. I may have had some input into it, I don't
2 recall that, but I was told you're going to agree to leaving
3 monies in the fund for a considerable amount of time
4 relinquishing some possible fees that will be possibly owed to
5 us and we would give up our interest in the fund.

6 I think the release came about as a general business
7 practice that when you finish something and you're giving
8 something up, you're having a release. I don't know if the
9 release was the main subject. And the release came about as
10 part of an agreement.

11 THE COURT: Well, you were giving up something, namely
12 your interest in the management company; right?

13 THE WITNESS: Yes.

14 THE COURT: So what were you getting in return?

15 THE WITNESS: For myself, my main motivation was that
16 Mark had expressed to me that by raising this money, the funds
17 would be healthy, and that was my personal main interest, that
18 the fund would be healthy. The investors --

19 THE COURT: So he would sell your interests to someone
20 else?

21 THE WITNESS: I think it was more he was going to use
22 my interest as a bonus or -- that's what was explained to me,
23 some large investor to come into the fund.

24 THE COURT: So he would be able to say to some other
25 investor, if you invest, it will get you a further benefit of

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1 this interest in the management company?

2 THE WITNESS: Correct.

3 THE COURT: Whose idea, if you know, from your
4 personal knowledge, was the release?

5 THE WITNESS: That was not my concentration issue at
6 the time.

7 THE COURT: What you just described didn't have
8 anything to do with the release per se; right?

9 THE WITNESS: I don't remember focusing on the release
10 at the time. As I said before, my concern was the fund. The
11 release came back as part of a document that I saw.

12 THE COURT: Explain to me, though, again what you were
13 getting from giving up your interest in the management.

14 THE WITNESS: I don't think that my general thought
15 was my own personal concern at the time, that was not my
16 thought. My thought, as I said before, was my family, myself,
17 my friends had a large amount of money in the fund and my
18 concern was that the fund would be healthy and do well.

19 THE COURT: So you thought this would help increase
20 the value of your remaining holdings in the fund?

21 THE WITNESS: I thought so.

22 THE COURT: Did you discuss the release with
23 Mr. Bodner?

24 THE WITNESS: I don't recall.

25 THE COURT: Did you discuss the release with anyone

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1 other than a lawyer?

2 THE WITNESS: I don't think so.

3 THE COURT: Don't tell me what was said, but did you
4 discuss the release with a lawyer?

5 THE WITNESS: It's eight years ago, seven, six years
6 ago --

7 THE COURT: So you don't recall?

8 THE WITNESS: Not right now.

9 THE COURT: It's possible, but you're not sure?

10 THE WITNESS: It's possible that when someone briefed
11 me on the case, they told me these are the points and mentioned
12 the release as part of it.

13 THE COURT: What was your understanding, if you had
14 one, as to what you were being released from?

15 THE WITNESS: Again, I'm not an attorney, but to me,
16 if I was told it was a release, then I can't be sued by anyone,
17 whether it's an investor, whether it's the fund, whether it's
18 tomorrow morning. Mark Nordlicht decides that I got too good
19 of a deal. It's over with, whatever that is.

20 THE COURT: So as you understood it, you were being
21 released from any possibility that Platinum could sue you for
22 any claims they might have?

23 THE WITNESS: Correct.

24 THE COURT: All right. Go ahead.

25 Q. Did you receive any money at all for the relinquishment of

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Huberfeld - Direct

1 your Platinum interests?

2 A. Directly or -- again, I want to be clear.

3 Q. In this document, in this particular agreement.

4 A. I don't recall.

5 Q. If it's not in this agreement, did you receive any -- does
6 this agreement provide for payment of any money to you for
7 selling or relinquishing your Platinum Management interests?

8 A. I don't think so.

9 Q. Had you had any discussions with Mr. Nordlicht regarding
10 the value of your Platinum Management interests prior to giving
11 them up?

12 A. I don't recall.

13 Q. Judge Rakoff asked you a question about whether the
14 understanding you had was that your shares in the management
15 company could be an inducement to some large investor
16 investing. Do you recall that?

17 A. Yes.

18 Q. Did you have any understanding at all as to whether
19 Mr. Nordlicht had represented to a potential investor that
20 these management shares were valuable?

21 A. I mean, it's self-evident that they were valuable. So they
22 could be used to ask someone to put in money to the fund. So
23 of course they were valuable. There's no question about that.

24 Q. You suggested it's self-evident that your interests in
25 Platinum Management were valuable, and here's what I'll ask

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1 you. Is it fair to say that you held your interests indirectly
2 through the Mark Nordlicht grantor trust and then through a
3 couple of vehicles owned by your family?

4 A. I believe that I owned it through Manor Lane Management,
5 which was a beneficiary of the Mark Nordlicht trust.

6 Q. Did you have an understanding of how the management company
7 would be paid either management fees, I'll say 2 percent, or
8 incentive fees, the 20 percent?

9 A. Well, I ran the Centurion fund, so of course I understood
10 that. I ran it myself from I believe 2005 to 2011. So of
11 course I understood the percentage, the management fees, how
12 those things work.

13 THE COURT: Just so the jury, because they may not
14 remember this, this was covered earlier, but what exactly was
15 the Centurion fund?

16 THE WITNESS: So in October of 2005, we started a
17 second fund, which was --

18 THE COURT: The first being Platinum?

19 THE WITNESS: First being PPVA, Platinum. The second
20 fund, I proposed that I was going to run it myself. Myself and
21 David founded that fund, put in money into that fund, and he
22 was going to do, quote-unquote, different strategies than PPVA
23 was doing. And we decided to go into that fund and basically
24 keep the -- other than a few percentages that were given to one
25 partner that was only a partner in that fund, the percentages

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1 of the management -- I'm sorry. The percentages of the
2 management company would be basically the same as in PPVA,
3 minus some small adjustments.

4 THE COURT: So PPVA already was paying a management
5 fee to Platinum Management for its services, yes?

6 THE WITNESS: I think so, yes.

7 THE COURT: And what was your understanding of what
8 that fee was?

9 THE WITNESS: I think that was 2 and 20.

10 THE COURT: And 2 being?

11 THE WITNESS: 2 being an expense fee, a number based
12 upon the total assets of the fund. Just make it easy, the fund
13 had \$100 million, it would be \$2 million that would be charged
14 that could be used for rents, expenses, whatever they would be.

15 THE COURT: Even I can understand that. And what
16 about 20?

17 THE WITNESS: And the 20 percent was what's called, I
18 think, an allocation fee, which is that if the fund made or
19 invested, let's say made 10 percent, then 2 percent, 20 percent
20 would be taken off of that, so they would make effectively
21 8 percent and 2 would go to the manager for the same thing.

22 THE COURT: Go ahead, counsel.

23 BY MR. GLUCK:

24 Q. Now, my question is, you suggested that it would be
25 self-evident that your shares indirectly had value. My

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1 question is, did you personally have an understanding of what
2 the NAV, net asset value of PPVA was in March 2016 when you
3 signed this release?

4 A. I believe that a general number, \$800 million was something
5 that was bandied about. It could be up or down something.
6 That was the number that was in my head if you would have asked
7 me.

8 Q. Did you personally have an understanding of whether
9 Platinum Management would be entitled to any incentive fees on
10 a go-forward base, the 20 percent?

11 A. Platinum Management would be entitled to fees under normal
12 circumstances. I don't think that -- from what I understand, I
13 didn't think that changed.

14 Q. Did you personally -- and what I mean by that is the entity
15 structure which you held the Platinum Management interest --
16 actually get any of those management 2 percent fees or was that
17 used on operations?

18 A. Again, I don't have the exact accounting. In general, most
19 of the money, at least the experience that I had, most of the
20 money was used for expenses. There may have been some conduit,
21 some residual money left over, but it was not a major profits.
22 The major profits center was the 20 percent.

23 Q. Did there come a time when you learned that somebody named
24 Marcos Katz was interested in assuming your Platinum Management
25 shares?

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1 A. I believe I knew there was some discussions with Marcos
2 Katz. I didn't know what percentage exactly was going to go to
3 him. I knew there was some discussions with him about a
4 possible investment and a possible incentive.

5 Q. Do you have any personal knowledge, not what you may have
6 heard later, but did you have any personal knowledge at the
7 time that the Katz family intended to invest in PPVA, the fund,
8 as opposed to merely acquiring shares of --

9 A. Again, I know there were discussions, I wasn't part of
10 those discussions on a regular basis to tell you exactly who --

11 Q. So you don't have personal knowledge?

12 A. Not that I recall.

13 Q. If Marcos Katz or his family was to pay money to Platinum
14 Management for your shares, how does that help the fund, PPVA?

15 A. Are you asking me a hypothetical question?

16 Q. No, in this case.

17 A. I'm not sure what you're saying.

18 Q. Upon relinquishing your shares, you said you wanted to help
19 the fund, right. How would relinquishing a beneficial interest
20 in incentive fees and allowing someone else to get those fees
21 help the fund?

22 A. Without investing more money, is that what you're saying?

23 Q. Yeah, just --

24 A. In an abstract, no, but maybe there were other
25 beneficiaries or other benefits that came along with that. If

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1 they got no other benefits, of course not, but maybe it was --
2 again, I don't want to speculate. Maybe he was tying his money
3 along. I don't know what the discussions were, but saying
4 giving him shares for no reason, of course not.

5 Q. Here, this release was executed and there wasn't even an
6 agreement at the time for the Katz family to take shares of the
7 management, was there?

8 MR. HERTZBERG: Counsel's testifying.

9 MR. GLUCK: It's a leading question, but he's also a
10 defendant witness on the Platinum side. So I would ask
11 permission to ask leading questions.

12 THE COURT: You may ask the questions, but I think
13 your question was poorly phrased.

14 At the time -- well you signed the release, yes?

15 THE WITNESS: I did.

16 THE COURT: At the time you signed your release, did
17 you know what the status was of any of the proposed investment
18 by Mr. Katz?

19 THE WITNESS: Mr. Katz specifically?

20 THE COURT: Or his family.

21 THE WITNESS: With Mr. Katz specifically, I don't
22 know. I know there were discussions, I don't know where they
23 were at that time.

24 THE COURT: Okay. Go ahead.

25 Q. Under these circumstances, why is it that you believed and,

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1 in fact, testified that giving up your interests in Platinum
2 Management would help the fund PPVA?

3 A. As I said, I believe that Mark told me that he was planning
4 or negotiating to raise money. I don't know if it's just
5 limited to Mr. Katz for many different people to use these
6 shares to raise money. You're limiting it to Mr. Katz, I
7 didn't testify to that.

8 Q. No, I didn't say that. I just asked you why would giving
9 up your shares, period, to anyone, help fund.

10 A. As I think I said, my expectation was that Mark was going
11 to take those shares to help raise money for the fund.

12 Q. And that expectation, you were asked some questions about
13 how did you have that expectation, had you talked to the Katz,
14 et cetera.

15 So can you explain why you had this expectation?

16 A. That is what my conversation, I believe, with Mark
17 Nordlicht at the time.

18 Q. During your conversations with Mark Nordlicht, did he relay
19 to you that it was his view that the shares of the management
20 company had no value?

21 A. I don't recall that.

22 Q. Do you recall having your counsel communicate with Platinum
23 Management as to whether the shares being relinquished for no
24 money would be considered a gift for tax purposes?

25 A. I don't recall.

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1 Q. In addition to relinquishing your interest in Platinum
2 Management, is it also true that you agreed to not take money
3 out of the fund for a period of time?

4 A. Yes, I believe so.

5 Q. You did not relinquish your LP interests with stock in the
6 fund itself by this agreement?

7 A. Correct.

8 Q. In March of 2016, was it already the case that partners of
9 Platinum Management were prohibited from taking money --

10 A. What I recall was that there was a period of time in which
11 partners were not taking out any money. I don't know --
12 remember exactly when that started. I believe that during
13 2016, it was in effect, as well.

14 Q. I may have questions about that later.

15 So in March of 2016, it was already the case that you
16 couldn't take money out of the fund, was it?

17 A. I believe so.

18 Q. Separately, in the course of your work in connection with
19 Platinum Management, did it come to your attention that there
20 was a backlog of redemption costs?

21 A. I believe that I knew there were redemptions that had not
22 been paid, and that was a moving target over, you know, a
23 period of time.

24 Q. The inability to pay redemptions was one of the problems
25 facing PPVA at this particular time; correct?

MC6Cpla5

Huberfeld - Direct

1 A. I think so.

2 THE COURT: Just again, so the jury is clear, because
3 they don't have the years of involvement that counsel does.
4 What is meant by redemption?

5 THE WITNESS: A redemption is that an investor had the
6 right to take out their money under certain circumstances and
7 certain times. There could have been a time where the investor
8 put in a redemption, which, for example, January 1st, and at
9 the time the fund didn't have any available funds, the fund
10 had, I believe, different remedies on what to do. One of them
11 was paying time, one of them was to borrow money to pay those
12 things, one of them was going to delay. Again, I wasn't
13 running the fund, but when I was -- had that experience when I
14 was running the fund, those different options were available as
15 the management.

16 THE COURT: Okay. Go ahead.

17 BY MR. GLUCK:

18 Q. So in this agreement where you were agreeing to not
19 withdraw your money from the fund, isn't it true that it was
20 already the case that you couldn't withdraw your money from the
21 fund and that even if you wanted to, others had tried who were
22 not prohibited and also couldn't?

23 A. Well, I think the thinking at the time, at least in my
24 mind, was it may not be the case at this moment, but if Mark
25 goes out and raises a significant amount of money, that exit

MC6Cpla5

Huberfeld - Direct

1 vehicle would be available and we had agreed to not exit, I
2 think — I'm not reading it here, but just off the top of my
3 head — something like two years. So that was something of
4 value I think that Mark felt that there's a significant amount
5 of money that would be, quote-unquote, locked up for a period
6 of time.

7 Q. Did you have an understanding of the quantum, the amount of
8 redemptions that were outstanding around March of 2016?

9 A. I don't know. I'm not sure.

10 Q. If I was to ask you to -- would more than a hundred million
11 sound right?

12 A. I don't know if it's a hundred million. It sounds like a
13 big number. It's possible.

14 Q. I'll ask you about a particular dinner in a moment, but is
15 it true that Mr. Bodner directed that no partners take money
16 out of the fund on a go-forward basis from late 2014 to early
17 2015?

18 A. I don't recall.

19 Q. I'm sorry. Could you speak up.

20 A. I don't recall that.

21 Q. You don't recall that?

22 A. No.

23 Q. I asked you earlier whether it was already the case that
24 partners could not take money out of the fund. Do you remember
25 that?

MC6Cpla5

Huberfeld - Direct

1 A. I do.

2 Q. If you don't recall that, how is it that partners could not
3 take money out of the fund?

4 A. My recollection is that I was told -- again, I don't recall
5 by whom, that I think Naftali Manela -- who was, I believe, the
6 CFO or some other position -- felt and communicated that -- I
7 think maybe Mark told this to me, that when there was any
8 pending redemption from an investor that could not be paid on
9 time, that no one from the, quote-unquote, from the family,
10 including myself, Mr. Bodner, Mr. Nordlicht would be able to
11 withdraw any money.

12 Q. To your knowledge, was that directive ever rescinded?

13 A. Again, I don't know if it was directed. This was a
14 conversation that I had with, I think, Mr. Nordlicht at the
15 time, and it was communicated to me and I never -- I didn't
16 follow up on that to see if it was rescinded or not.

17 Q. So in connection with this agreement, you gave up your
18 interests in Platinum Management and you agreed not to make
19 redemptions for a period of time; is that fair?

20 A. Yes, I believe. Again, I didn't read this over carefully
21 today. I believe there may have been also some waiving of some
22 crude management fees, as well.

23 Q. By March 30, 2016, had any facts been drawn to your
24 attention that the NAV of PPVA was inaccurate?

25 A. I'm going to try to answer accurately. I don't know.

MC6Cpla5

Huberfeld - Direct

1 Q. By that same date, had you become aware of any claims,
2 litigation, regulatory, criminal, that were being investigated
3 or asserted against PPVA, Platinum Management, or the family of
4 the partners?

5 A. I think the only thing in this timeframe that we were aware
6 of, that there was an investigation to COBA's investment into
7 Platinum.

8 Q. Would you please describe for the jury the broad
9 circumstances of that investigation.

10 A. So I believe that the fund received a subpoena sometime in
11 mid 2015 requesting information having to do with COBA's
12 investment and our relationship with Jonah Rechnitz, and I
13 believe that continued for a period of time.

14 Q. Was that investigation particularly targeted at any members
15 of Platinum Management?

16 A. I'm not sure of how I can answer that.

17 Q. What was the outcome of that investigation?

18 A. The outcome of the investigation was that I was arrested on
19 June 8th, 2016, and charged with -- I don't know the exact
20 charges, but having to do with Jonah Rechnitz and COBA.

21 Q. Would it refresh your recollection if you saw the SDNY
22 statement regarding your conviction?

23 A. Yes. I know that I was convicted and served a sentence in
24 prison and am currently on probation for another few months.

25 Q. Was anyone else charged in the same investigation?

MC6Cpla5

Huberfeld - Direct

1 A. I think Jonah Rechnitz and Norman Seabrook.

2 Q. Do you know what Jonah Rechnitz was charged with?

3 A. The exact charge, I don't know.

4 Q. Do you know what Mr. Seabrook was charged with?

5 A. What his exact charge was, I don't know.

6 THE COURT: The conviction and what the defendant was
7 convicted of is a matter of public record. So if you have the
8 judgment of conviction, you can state that on the record.

9 MR. GLUCK: We can do that. If you can please pull up
10 the justice.gov exhibit.

11 Q. As he's doing that, my query is, were you specifically
12 aware of the COBA investigation --

13 MR. HERTZBERG: The Court invited counsel to put up
14 the judgment of conviction. It's not what we have on the
15 screen and I see the witness is looking at his screen. So I
16 don't want there being any confusion.

17 THE COURT: I agree. It's not.

18 MR. GLUCK: What's on the screen --

19 THE COURT: No, don't describe what's on the screen.
20 If you don't have the judgment of conviction --

21 MR. GLUCK: We'll bring it up, the correct document.

22 THE COURT: Okay.

23 MR. GLUCK: I'm sure that was a mistake.

24 Q. At the time you signed this release, were you aware that
25 the COBA investigation was going on?

MC6Cpla5

Huberfeld - Direct

1 A. Yes.

2 Q. COBA, is that the Corrections Officers Benevolent
3 Association Pension Fund or something to that effect?

4 A. Yes.

5 Q. Is this the judgment in the criminal case that we were
6 referring to, Plaintiffs' Exhibit 899?

7 A. Yes.

8 THE COURT: So the jury can take notice, and
9 Mr. Huberfeld pled guilty to conspiracy to commit wire fraud,
10 meaning he agreed with at least one other person to make
11 fraudulent representations and that the interstate wire
12 communication was used in the course of a conspiracy.

13 When you pled guilty, who did you plead guilty was
14 your coconspirator?

15 THE WITNESS: He did not plead guilty. Mr. Seabrook
16 did not plead guilty, he went to trial.

17 THE COURT: Excuse me. That's not my question.

18 When you pled guilty, were you asked who was your
19 coconspirator?

20 THE WITNESS: I don't think so.

21 THE COURT: Okay. And what was it that you pled
22 guilty to in your own words?

23 THE WITNESS: I pled guilty to presenting a \$60,000
24 false invoice to my own management company.

25 THE COURT: And that was a bribe?

MC6Cpla5

Huberfeld - Direct

1 THE WITNESS: No.

2 THE COURT: What was it?

3 THE WITNESS: It was a false invoice that I presented
4 to my management company.

5 THE COURT: And you knew it was false?

6 THE WITNESS: I knew that they -- that the invoice was
7 not for Nick tickets.

8 THE COURT: Why did you do that?

9 THE WITNESS: I did that because I was asked by
10 Mr. Rechnitz to pay him \$60,000 and I came up with how to pay
11 him \$60,000.

12 THE COURT: So this was a bribe to him or -- my
13 apologies. Withdraw the word "bribe."

14 This was a payment to him that he was demanding from
15 you?

16 THE WITNESS: Correct.

17 THE COURT: And you made the payment, but then it was
18 covered up through this false invoice, is that --

19 THE WITNESS: Correct.

20 THE COURT: Go ahead, counsel.

21 BY MR. GLUCK:

22 Q. What is the relationship between the false invoice that you
23 submitted for the payment to Jonah Rechnitz and the Corrections
24 Officer Benevolent Association Pension?

25 A. The payment was to reimburse Jonah Rechnitz for Norman

MC6Cpla5

Huberfeld - Direct

1 Seabrook's efforts to steer money into Platinum fund.

2 Q. Did that pension, the union pension fund, make an
3 investment in PPVA?

4 A. Yes.

5 MR. GLUCK: Mr. Parson, will you please call up
6 CTRL6159792, which we'll mark as Plaintiffs' Exhibit, next in
7 order, which Ms. Shen will provide.

8 MS. SHEN: PX 934.

9 MR. GLUCK: We seek to admit this as PX 934.

10 MR. HERTZBERG: Objection, your Honor. 401. I think
11 we've gone as far as we need to go on this issue as pertaining
12 to this case.

13 THE COURT: No, I think it's -- well, I'd agree with
14 you that there will come a point where it will be not a 401
15 problem, but possibly a 403 problem. I don't think we're there
16 yet. So this exhibit is received.

17 (Plaintiff's Exhibit 934 received in evidence)

18 BY MR. GLUCK:

19 Q. How much money did COBA invest into PPVA?

20 A. I believe \$20 million.

21 Q. In approximately 2014?

22 A. I think during that time period, in that year.

23 Q. I asked you earlier whether you typically shared
24 information concerning your -- the businesses that fell within
25 the scope of your unincorporated partnership with Mr. Bodner.

MC6Cpla5

Huberfeld - Direct

1 Did you share the fact that COBA had invested in PPVA with
2 Mr. Bodner?

3 A. I don't recall.

4 Q. Did you share the circumstances by which COBA was induced
5 to invest in PPVA with Mr. Bodner?

6 A. I can't answer that question. The way you're asking, I
7 can't answer it.

8 Q. Do you not understand the question?

9 A. I understand the question, I just can't answer it the way
10 you're asking me.

11 THE COURT: Well, did you have any discussions with
12 Mr. Bodner relating to any aspect of what has just been
13 described?

14 THE WITNESS: I need a timeline to be able to answer
15 that.

16 THE COURT: When was the money paid?

17 THE WITNESS: They invested in 2014.

18 THE COURT: Okay. At any time in 2014 or '15.

19 THE WITNESS: Is it possible that I said to Mr. Bodner
20 COBA invested, it's possible, I just don't recall that. You're
21 asking me -- I don't want to say things I wasn't asked to.

22 THE COURT: You made this payment with the
23 understanding that it would lead the person who was arranging
24 for the investments of this pension fund to invest in Platinum,
25 yes?

MC6Cpla5

Huberfeld - Direct

1 THE WITNESS: Those payments were made well after they
2 invested. It was not before --

3 THE COURT: But it was still in your mind, a payment
4 for improper services rendered, yes?

5 THE WITNESS: At the time, no. Subsequently, I found
6 that out later.

7 THE COURT: What did you think you were paying for?

8 THE WITNESS: If you take out my allocution, it was
9 not -- we had this -- I believe I was put in a situation where
10 this was a criminal story and I was represented by counsel, but
11 I was trying to be very accurate. And yes, when I allocuted to
12 the fact that I gave or arranged to get the \$60,000, it was not
13 for Nick tickets. What the ultimate -- what it was for, I was
14 found out later on.

15 THE COURT: And what you found out was that it was for
16 investing in Platinum?

17 THE WITNESS: No, it was found out that it was used to
18 reimburse Norman Seabrook -- or Rechnitz, the money he laid out
19 to Seabrook.

20 THE COURT: And what was your understanding of why he
21 laid it out to Mr. Seabrook?

22 THE WITNESS: Because he invested in the fund.

23 THE COURT: Because Mr. Seabrook had the power to
24 invest the monies in Platinum?

25 THE WITNESS: Yes, we found that out at some point.

MC6Cpla5

Huberfeld - Direct

1 THE COURT: Very good. So the question then is, this
2 is what I think counsel is trying to ask, I'll take the liberty
3 of asking it because we're going to end for the day in about
4 three minutes, did you discuss any of what you've just
5 described to me with Mr. Bodner at any time prior 2016?

6 THE WITNESS: I don't believe so, other than the fact
7 that COBA may have invested.

8 THE COURT: You mentioned that before.

9 I think, ladies and gentlemen, we need to stop for the
10 day because I have another matter.

11 Tomorrow, we will start promptly at 9:30 and we'll
12 probably go straight to 4:30 tomorrow, so you have a full day
13 tomorrow. And have a very good evening. We'll see you in the
14 morning.

15 (Continued on next page)

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MC6Cpla5

Huberfeld - Direct

1 (Jury not present)

2 THE COURT: So how much longer does plaintiffs'
3 counsel anticipate his examination of this witness?

4 MR. GLUCK: Let me just check my outline.

5 THE COURT: Take your time. Take your time within the
6 next minute.

7 MR. SEIDEL: Take your time, you have 30 seconds.

8 MR. GLUCK: If we continue at this rate, I would
9 estimate no more than maybe an hour and 10 minutes.

10 THE COURT: And how long on cross? This is not
11 absolutely binding because you haven't heard the direct yet,
12 but given Mr. Huberfeld just asked me how long he was going to
13 be on the stand, I feel we should give him at least an idea.

14 MR. HERTZBERG: An hour to 90 minutes, not more than
15 that.

16 THE COURT: It sounds to me you have a full morning.
17 We're going to be 9:30 to 1:00, maybe less than that.

18 You're excused.

19 Now, there were some things that counsel was going to
20 get to my law clerk, so we'll take a five-minute break, but
21 after that, you'll promptly leave the courtroom because we have
22 some distinguished lawyers ready to present argument in another
23 matter. We'll see you in five minutes. We will be starting at
24 9 o'clock tomorrow.

25 (Adjourned to December 7, 2022 at 9:00 a.m.)

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